

Society for Testing and Materials (ASTM) publication "Standard Specification for Roof and Rock Bolts and Accessories" (ASTM F432-95).

## II. Desired Focus of Comments

MSHA is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

A copy of the proposed information collection request can be obtained by contacting the employee listed in the **ADDRESSES** section of this notice, or viewed on the internet by accessing the MSHA home page (<http://www.msha.gov/>) and selecting "Rules & Regs", and then selecting "FedReg. Docs". On the next screen, select "Paperwork Reduction Act Supporting Statement" to view documents supporting the **Federal Register** Notice.

## III. Current Actions

MSHA is seeking to continue the requirement for mine operators to obtain certification from the manufacturer that roof and rock bolts and accessories are manufactured and tested in accordance with the applicable American Society for Testing and Materials (ASTM) specifications and make that certification available to an authorized representative of the Secretary.

*Type of Review:* Extension.

*Agency:* Mine Safety and Health Administration.

*Title:* Safety Standards for Roof Bolts in Metal and Nonmetal Mines and Underground Coal Mines.

*OMB Number:* 1219-0121.

*Frequency:* On occasion.

*Affected Public:* Business or other for-profit.

*Respondents:* 833.

*Responses:* 3,292.

*Total Burden Hours:* 165 hours.

*Total Burden Cost (capital/startup):* \$0.

*Total Burden Cost (operating/maintaining):* \$0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated at Arlington, Virginia, this 25th day of February, 2009.

**John Rowlett.**

*Director, Management Services Division.*

[FR Doc. E9-4417 Filed 3-2-09; 8:45 am]

**BILLING CODE 4510-43-P**

## LIBRARY OF CONGRESS

### Copyright Office

#### Notification of Agreements Under the Webcaster Settlement Act of 2008

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

**ACTION:** Notice of agreement.

**SUMMARY:** The Copyright Office is publishing three agreements which set rates and terms for the reproduction and performance of sound recordings made by certain specified webcasters, under two statutory licenses. Webcasters who meet the eligibility requirements may choose to operate under the statutory licenses in accordance with the rates and terms set forth in the agreements published herein rather than the rates and terms of any determination by the Copyright Royalty Judges.

#### FOR FURTHER INFORMATION CONTACT:

Stephen Ruwe, Attorney Advisor, or Tanya M. Sandros, Deputy General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, DC 20024.

Telephone: (202) 707-8380. Telefax: (202) 707-8366. See the final paragraph of the **SUPPLEMENTARY INFORMATION** for information on where to direct questions regarding the rates and terms set forth in the agreement.

**SUPPLEMENTARY INFORMATION:** On October 16, 2008, President Bush signed into law the Webcaster Settlement Act of 2008 ("WSA"), Public Law 110-435, 122 Stat. 4974, which amends Section 114 of the Copyright Act, title 17 of the United States Code, as it relates to webcasters. The WSA allows SoundExchange, the Receiving Agent designated by the Librarian of Congress in his June 20, 2002, order for collecting royalty payments made by eligible nonsubscription transmission services under the Section 112 and Section 114 statutory licenses, see 67 FR 45239 (July 8, 2002), to enter into agreements on behalf of all copyright owners and

performers to set rates, terms and conditions for webcasters operating under the Section 112 and Section 114 statutory licenses for a period of not more than 11 years beginning on January 1, 2005. The authority to enter into such settlement agreements expired on February 15, 2009.

Unless otherwise agreed to by the parties to an agreement, the rates and terms set forth in such agreements apply only to the time periods specified in the agreement and have no precedential value in any proceeding concerned with the setting of rates and terms for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings. To make this point clear, Congress included language expressly addressing the precedential value of such agreements. Specifically, Section 114(f)(5)(C), as added by the WSA, states that: "Neither subparagraph (A) nor any provisions of any agreement entered into pursuant to subparagraph (A), including any rate structure, fees, terms, conditions, or notice and recordkeeping requirements set forth therein, shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral recordings or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice and recordkeeping requirements by the Copyright Royalty Judges under paragraph (4) or Section 112(e)(4). It is the intent of Congress that any royalty rates, rate structure, definitions, terms, conditions, or notice and recordkeeping requirements, included in such agreements shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in Section 801(b). This subparagraph shall not apply to the extent that the receiving agent and a webcaster that is party to an agreement entered into pursuant to subparagraph (A) expressly authorize the submission of the agreement in a proceeding under this subsection." 17 U.S.C. 114(f)(5)(C) (2009).

On February 13, 2009, SoundExchange and the Corporation for Public Broadcasting ("CPB") notified the Copyright Office that they had negotiated an agreement for the reproduction and performance of sound

recordings by small commercial webcasters under the Section 112 and Section 114 statutory licenses and requested that the Copyright Office publish the Rates and Terms in the **Federal Register**, as required under Section 114(f)(5)(B) of the Copyright Act, as amended by the WSA.

On February 15, 2009, SoundExchange and the National Association of Broadcasters (“NAB”) notified the Copyright Office that they had negotiated an agreement for the reproduction and performance of sound recordings by small commercial webcasters under the Section 112 and Section 114 statutory licenses and requested that the Copyright Office publish the Rates and Terms in the **Federal Register**, as required under Section 114(f)(5)(B) of the Copyright Act, as amended by the WSA.

On February 15, 2009, SoundExchange and the Small Webcasters<sup>1</sup> notified the Copyright Office that they had negotiated an agreement for the reproduction and performance of sound recordings by small commercial webcasters under the Section 112 and Section 114 statutory licenses and requested that the Copyright Office publish the Rates and Terms in the **Federal Register**, as required under Section 114(f)(5)(B) of the Copyright Act, as amended by the WSA.

Thus, in accordance with the requirement set forth in amended Section 114(f)(5)(B), the Copyright Office is publishing the submitted agreements, as Appendix A (Agreement made between SoundExchange and CPB); Appendix B (Agreement made between SoundExchange and NAB); and Appendix C (Agreement made between SoundExchange and Small Webcasters), thereby making the rates and terms in the agreements available to any webcasters meeting the respective eligibility conditions of the agreements as an alternative to the rates and terms of any determination by the Copyright Royalty Judges.

The Copyright Office has no responsibility for administering the rates and terms of the agreement beyond the publication of this notice. For this reason, questions regarding the rates

and terms set forth in the agreement should be directed to SoundExchange (for contact information, see <http://www.soundexchange.com>).

Dated: February 24, 2009.

**Marybeth Peters**,  
*Register of Copyrights.*

**Note:** The following Appendices will not be codified in the Code of Federal Regulations.

## Appendix A

### Agreement Concerning Rates and Terms

This Agreement Concerning Rates and Terms (“*Agreement*”), dated as of January 13, 2009 (“*Execution Date*”), is made by and between SoundExchange, Inc. (“*SoundExchange*”) and the Corporation for Public Broadcasting (“*CPB*”), on behalf of all Covered Entities (SoundExchange, and CPB each a “*Party*” and, jointly, the “*Parties*”). Capitalized terms used herein are defined in Article 1 below.

Whereas, SoundExchange is the “receiving agent” as defined in 17 U.S.C. 114(f)(5)(E)(ii) designated for collecting and distributing statutory royalties received from Covered Entities for their Web Site Performances;

Whereas, the Webcaster Settlement Act of 2008 (codified at 17 U.S.C. 114(f)(5)) authorizes SoundExchange to enter into agreements for the reproduction and performance of Sound Recordings under Sections 112(e) and 114 of the Copyright Act that, once published in the **Federal Register**, shall be binding on all Copyright Owners and Performers, in lieu of any determination by the Copyright Royalty Judges;

Whereas, in view of the unique business, economic and political circumstances of CPB, Covered Entities, SoundExchange, Copyright Owners and Performers at the Execution Date, the Parties have agreed to the royalty rates and other consideration set forth herein for the period January 1, 2005 through December 31, 2010;

Now, therefore, pursuant to 17 U.S.C. 114(f)(5), and in consideration of the mutual promises contained in this Agreement and for other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

#### Article 1

##### Definitions

The following terms shall have the meanings set forth below:

1.1 “*Agreement*” shall have the meaning set forth in the preamble.

1.2 “*ATH*” or “*Aggregate Tuning Hours*” means the total hours of programming that Covered Entities have transmitted during the relevant period to all listeners within the United States from all Covered Entities that provide audio programming consisting, in whole or in part, of Web Site Performances, less the actual running time of any sound recordings for which the Covered Entity has obtained direct licenses apart from this Agreement. By way of example, if a Covered Entity transmitted one hour of programming to ten (10) simultaneous listeners, the

Covered Entity’s Aggregate Tuning Hours would equal ten (10). If three (3) minutes of that hour consisted of transmission of a directly licensed recording, the Covered Entity’s Aggregate Tuning Hours would equal nine (9) hours and thirty (30) minutes. As an additional example, if one listener listened to a Covered Entity for ten (10) hours (and none of the recordings transmitted during that time was directly licensed), the Covered Entity’s Aggregate Tuning Hours would equal 10.

1.3 “*Authorized Web Site*” means any Web Site operated by or on behalf of any Covered Entity that is accessed by Web Site Users through a Uniform Resource Locator (“*URL*”) owned by such Covered Entity and through which Web Site Performances are made by such Covered Entity.

1.4 “*CPB*” shall have the meaning set forth in the preamble.

1.5 “*Collective*” shall have the meaning set forth in 37 CFR 380.2(c).

1.6 “*Copyright Owners*” are Sound Recording copyright owners who are entitled to royalty payments made pursuant to the statutory licenses under 17 U.S.C. 112(e) and 114(f).

1.7 “*Covered Entities*” means NPR, American Public Media, Public Radio International, and Public Radio Exchange, and, in calendar years 2005 through 2007, up to four-hundred and fifty (450) Originating Public Radio Stations as named by CPB. CPB shall notify SoundExchange annually of the eligible Originating Public Radio Stations to be considered Covered Entities hereunder (subject to the numerical limitations set forth herein). The number of Originating Public Radio Stations considered to be Covered Entities is permitted to grow by no more than 10 Originating Public Radio Stations per year beginning in calendar year 2008, such that the total number of Covered Entities at the end of the Term will be less than or equal to 480. The Parties agree that the number of Originating Public Radio Stations licensed hereunder as Covered Entities shall not exceed the maximum number permitted for a given year without SoundExchange’s express written approval, except that CPB shall have the option to increase the number of Originating Public Radio Stations that may be considered Covered Entities as provided in Section 4.4.

1.8 “*Ephemeral Phonorecord*” shall have the meaning set forth in Section 3.1(b).

1.9 “*Execution Date*” shall have the meaning set forth in the preamble.

1.10 “*License Fee*” shall have the meaning set forth in Section 4.1.

1.11 “*Music ATH*” means ATH of Web Site Performances of Sound Recordings of musical works.

1.12 “*NPR*” shall mean National Public Radio, with offices at 635 Massachusetts Avenue, NW., Washington, DC 20001.

1.13 “*Originating Public Radio Stations*” shall mean a noncommercial terrestrial radio broadcast station that (i) is licensed as such by the Federal Communications Commission; (ii) originates programming and is not solely a repeater station; (iii) is a member or affiliate of NPR, American Public Media, Public Radio International, or Public Radio Exchange, a member of the National Federation of Community Broadcasters, or

<sup>1</sup> The “Small Webcasters” that negotiated the agreement are Attention Span Radio; Blogmusik (Deezer.com); Born Again Radio; Christmas Music 24/7; Club 80’s Internet Radio; Dark Horse Productions; Edgewater Radio; Forever Cool (Forevercool.us); Indiwaves (Set YourMusicFree.com); Ludlow Media (MandarinRadio.com); Musical Justice; My Jazz Network; PartiRadio; Playa Cofi Jukebox (Tropicalglen.com); Soulsville Online; tainradio; Voice of Country; and Window To The World Communications (WFMT.com).

another public radio station that is qualified to receive funding from the Corporation for Public Broadcasting pursuant to its criteria; (iv) qualifies as a “noncommercial webcaster” under 17 U.S.C. 114(f)(5)(E)(i); and (v) either (a) offers Web Site Performances only as part of the mission that entitles it to be exempt from taxation under Section 501 of the Internal Revenue Code of 1986 (26 U.S.C. 501), or (b) in the case of a governmental entity (including a Native American tribal governmental entity), is operated exclusively for public purposes.

1.14 “Party” shall have the meaning set forth in the preamble.

1.15 “Performers” means the independent administrators identified in 17 U.S.C. 114(g)(2)(B) and (C) and the individuals and entities identified in 17 U.S.C. 114(g)(2)(D).

1.16 “Person” means a natural person, a corporation, a limited liability company, a partnership, a trust, a joint venture, any governmental authority or any other entity or organization.

1.17 “Phonorecords” shall have the meaning set forth in 17 U.S.C. 101.

1.18 “Side Channel” means any Internet-only program available on an Authorized Web Site or an archived program on such Authorized Web Site that, in either case, conforms to all applicable requirements under 17 U.S.C. 114.

1.19 “SoundExchange” shall have the meaning set forth in the preamble and shall include any successors and assigns to the extent permitted by this Agreement.

1.20 “Sound Recording” shall have the meaning set forth in 17 U.S.C. 101.

1.21 “Term” shall have the meaning set forth in Section 7.1.

1.22 “Territory” means the United States, its territories, commonwealths and possessions.

1.23 “URL” shall have the meaning set forth in Section 1.3.

1.24 “Web Site” means a site located on the World Wide Web that can be located by a Web Site User through a principal URL.

1.25 “Web Site Performances” means all public performances by means of digital audio transmissions of Sound Recordings, including the transmission of any portion of any Sound Recording, made through an Authorized Web Site in accordance with all requirements of 17 U.S.C. 114, from servers used by a Covered Entity (provided that the Covered Entity controls the content of all materials transmitted by the server), or by a sublicensee authorized pursuant to Section 3.2, that consist of either (a) the retransmission of a Covered Entity’s over-the-air terrestrial radio programming or (b) the digital transmission of nonsubscription Side Channels that are programmed and controlled by the Covered Entity. This term does not include digital audio transmissions made by any other means.

1.26 “Web Site Users” means all those who access or receive Web Site Performances or who access any Authorized Web Site.

## Article 2

### Agreement Pursuant to Webcaster Settlement Act of 2008

2.1 *General.* This Agreement is entered into pursuant to the Webcaster Settlement Act of 2008 (Pub. L. 110–435; to be codified at 17 U.S.C. 114(f)(5)).

2.2 *Eligibility Conditions.* The only webcasters (as defined in 17 U.S.C. 114(f)(5)(E)(iii)) eligible to avail themselves of the terms of this Agreement as contemplated by 17 U.S.C. 114(f)(5)(B) are the Covered Entities, as expressly set forth herein. The terms of this Agreement shall apply to the Covered Entities in lieu of other rates and terms applicable under 17 U.S.C. 112 and 114.

2.3 *Agreement Nonprecedential.* Consistent with 17 U.S.C. 114(f)(5)(C), this Agreement, including any rate structure, fees, terms, conditions, and notice and recordkeeping requirements set forth therein, is nonprecedential and shall not be introduced nor used by any Person, including the Parties and any Covered Entities, admissible as evidence or otherwise taken into account in any administrative, judicial, or other proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges under 17 U.S.C. 114(f)(4) or 112(e)(4), or any administrative or judicial proceeding pertaining to rates, terms or reporting obligations for any yet-to-be-created right to collect royalties for the performance of Sound Recordings by any technology now or hereafter known. Any royalty rates, rate structure, definitions, terms, conditions and notice and recordkeeping requirements included in this Agreement shall be considered as a compromise motivated by the unique business, economic and political circumstances of webcasters, copyright owners, and performers, and the pending appeal of the decision of the Copyright Royalty Judges by NPR on behalf of itself and its member stations, rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller, or otherwise meet the objectives set forth in Section 801(b) of the Copyright Act.

2.4 *Reservation of Rights.* The Parties agree that the entering into of this Agreement shall be without prejudice to any of their respective positions in any proceeding with respect to the rates, terms or reporting obligations to be established for the making of Ephemeral Phonorecords or the digital audio transmission of Sound Recordings after the Term of this Agreement on or by Covered Entities under 17 U.S.C. 112 and 114 and their implementing regulations. The Parties further acknowledge and agree that the entering of this Agreement, the performance of its terms, and the acceptance of any payments and reporting by SoundExchange (i) do not express or imply any acknowledgement that CPB, Covered Entities, or any other persons are eligible for the

statutory license of 17 U.S.C. 112 and 114, and (ii) shall not be used as evidence that CPB, the Covered Entities, or any other persons are acting in compliance with the provisions of 17 U.S.C. 114(d)(2)(A) or (C) or any other applicable laws or regulations.

## Article 3

### Scope of Agreement

#### 3. General.

(a) *Public Performances.* In consideration for the payment of the License Fee by CPB, SoundExchange agrees that Covered Entities that publicly perform under Section 114 all or any portion of any Sound Recordings through an Authorized Web Site, within the Territory, by means of Web Site Performances, may do so in accordance with and subject to the limitations set forth in this Agreement; *provided that:* (i) Such transmissions are made in strict conformity with the provisions of 17 U.S.C. 114(d)(2)(A) and (C); and (ii) such Covered Entities comply with all of the terms and conditions of this Agreement and all applicable copyright laws. For clarity, there is no limit to the number of Web Site Performances that a Covered Entity may transmit during the Term under the provisions of this Section 3.1(a), if such Web Site Performances otherwise satisfy the requirements of this Agreement.

(b) *Ephemeral Phonorecords.* In consideration for the payment of the License Fee by CPB, SoundExchange agrees that Covered Entities that make and use solely for purposes of transmitting Web Site Performances as described in Section 3.1(a), within the Territory, Phonorecords of all or any portion of any Sound Recordings (“Ephemeral Phonorecords”), may do so in accordance with and subject to the limitations set forth in this Agreement; *provided that:* (i) Such Phonorecords are limited solely to those necessary to encode Sound Recordings in different formats and at different bit rates as necessary to facilitate Web Site Performances licensed hereunder; (ii) such Phonorecords are made in strict conformity with the provisions set forth in 17 U.S.C. 112(e)(1)(A)–(D); and (iii) the Covered Entities comply with 17 U.S.C. 112(a) and (e) and all of the terms and conditions of this Agreement.

3.2 *Limited Right to Sublicense.* Rights under this Agreement are not sublicensable, except that a Covered Entity may employ the services of a third Person to provide the technical services and equipment necessary to deliver Web Site Performances on behalf of such Covered Entity pursuant to Section 3.1, but only through an Authorized Web Site. Any agreement between a Covered Entity and any third Person for such services shall (i) contain the substance of all terms and conditions of this Agreement and obligate such third Person to provide all such services in accordance with all applicable terms and conditions of this Agreement, including, without limitation, Articles 3, 5 and 6; (ii) specify that such third Person shall have no right to make Web Site Performances or any other performances or Phonorecords on its own behalf or on behalf of any Person or entity other than a Covered Entity through the Covered Entity’s Authorized Web Site by

virtue of this Agreement, including in the case of Phonorecords, pre-encoding or otherwise establishing a library of Sound Recordings that it offers to a Covered Entity or others for purposes of making performances, but instead must obtain all necessary licenses from SoundExchange, the copyright owner or another duly authorized Person, as the case may be; (iii) specify that such third Person shall have no right to grant any further sublicenses; and (iv) provide that SoundExchange is an intended third-party beneficiary of all such obligations with the right to enforce a breach thereof against such third party.

### 3.3 Limitations.

(a) *Reproduction of Sound Recordings.* Except as provided in Section 3.2, nothing in this Agreement grants Covered Entities, or authorizes Covered Entities to grant to any other Person (including, without limitation, any Web Site User, any operator of another Web Site or any authorized sublicensee), the right to reproduce by any means, method or process whatsoever, now known or hereafter developed, any Sound Recordings, including, but not limited to, transferring or downloading any such Sound Recordings to a computer hard drive, or otherwise copying the Sound Recording onto any other storage medium.

(b) *No Right of Public Performance.* Except as provided in Section 3.2, nothing in this Agreement authorizes Covered Entities to grant to any Person the right to perform publicly, by means of digital transmission or otherwise, any Sound Recordings.

(c) *No Implied Rights.* The rights granted in this Agreement extend only to Covered Entities and grant no rights, including by implication or estoppel, to any other Person, except as expressly provided in Section 3.2. Without limiting the generality of the foregoing, this Agreement does not grant to Covered Entities (i) any copyright ownership interest in any Sound Recording; (ii) any trademark or trade dress rights; (iii) any rights outside the Territory; (iv) any rights of publicity or rights to any endorsement by SoundExchange or any other Person; or (v) any rights outside the scope of a statutory license under 17 U.S.C. 112(e) and 114.

(d) *Territory.* The rights granted in this Agreement shall be limited to the Territory.

(e) *No Syndication Rights.* Nothing in this Agreement authorizes any Web Site Performances to be accessed by Web Site Users through any Web Site other than an Authorized Web Site.

3.4 *Effect of Non-Performance by any Covered Entity.* In the event that any Covered Entity breaches or otherwise fails to perform any of the material terms of this Agreement it is required to perform (including any obligations applicable under Section 112 or 114), or otherwise materially violates the terms of this Agreement or Section 112 or 114 or their implementing regulations, the remedies of SoundExchange shall be specific to that Covered Entity only, and shall include, without limitation, (i) termination of that Covered Entity's rights hereunder upon written notice to CPB, and (ii) the rights of SoundExchange and Copyright owners under applicable law. SoundExchange's remedies for such a breach or failure by an individual

Covered Entity shall not include termination of this Agreement in its entirety or termination of the rights of other Covered Entities, except that if CPB breaches or otherwise fails to perform any of the material terms of this Agreement, or such a breach or failure by a Covered Entity results from CPB's inducement, and CPB does not cure such breach or failure within thirty (30) days after receiving notice thereof from SoundExchange, then SoundExchange may terminate this Agreement in its entirety, and a prorated portion of the License Fee for the remainder Term shall, after deduction of any damages payable to SoundExchange by virtue of the breach or failure, be credited to statutory royalty obligations of Covered Entities to SoundExchange for the Term as specified by CPB.

### Article 4

#### Consideration

4.1 *License Fee.* The total license fee for all Web Site Performances and Ephemeral Phonorecords made during the Term shall be one million eight hundred and fifty thousand dollars (\$1,850,000) (the "License Fee"), unless additional payments are required as described in Section 4.3 or 4.4. The Parties acknowledge that CPB has paid SoundExchange two hundred and fifty thousand dollars (\$250,000) of such amount prior to the Execution Date. Within ten (10) business days after publication of this Agreement in the **Federal Register**, CPB shall pay SoundExchange the balance of one million six hundred thousand dollars (\$1,600,000).

4.2 *Calculation of License Fee.* The Parties acknowledge that the License Fee includes: (i) An annual minimum fee of five hundred dollars (\$500) for each Covered Entity for each year during the Term, except that the annual minimum fee was calculated at two hundred and fifty dollars (\$250) per year for each Covered Entity substantially all of the programming provided by which is reasonably classified as news, talk, sports or business programming; (ii) additional usage fees calculated in accordance with the royalty rate structure applicable to noncommercial webcasters under the Small Webcaster Settlement Act of 2002 (see 68 FR 35,008 (June 11, 2003)); and (iii) a discount that reflects the administrative convenience to SoundExchange of receiving one payment that covers a large number of separate entities for six (6) calendar years, as well as the "time value" of money and protection from bad debt that arises from being paid in advance for calendar years 2009 and 2010.

4.3 *Total Music ATH True-Up:* If the total Music ATH for all Covered Entities, in the aggregate for calendar years 2008, 2009 and 2010 combined, as estimated in accordance with the methodology described in Attachment 1, is greater than seven hundred sixty four million six hundred thousand (764,600,000) (approximately the amount that would result from 10% year-over-year Music ATH growth in 2008, 2009 and 2010), CPB shall make an additional payment to SoundExchange for all such Music ATH in excess of seven hundred sixty four million six hundred thousand (764,600,000) for all Covered Entities in the aggregate at the rate

of \$0.00251 per ATH. Such payment shall be due no later than March 1, 2011.

4.4 *Station Growth True-Up:* If the total number of Originating Public Radio Stations that wish to make Web Site Performances in any of calendar year 2008, 2009 and 2010 exceeds the number of such Originating Public Radio Stations considered Covered Entities in the relevant year, and the excess Originating Public Radio Stations do not wish to pay royalties for such Web Site Performances apart from this Agreement, CPB may elect by written notice to SoundExchange to increase the number of Originating Public Radio Stations considered Covered Entities in the relevant year effective as of the date of the notice. To the extent of any such elections for all or any part of calendar year 2008, 2009 or 2010, CPB shall make an additional payment to SoundExchange for each calendar year or part thereof it elects to have an additional Originating Public Radio Station considered a Covered Entity, in the amount of five hundred dollars (\$500) per Originating Public Radio Station per year. Such payment shall accompany the notice electing to have an additional Originating Public Radio Station considered a Covered Entity.

4.5 *Late Fee.* The Parties hereby agree to the terms set forth in 37 CFR 380.4(e) as if that Section (and the applicable definitions provided in 37 CFR 380.2) were set forth herein.

#### 4.6. Payments to Third Persons.

(a) SoundExchange and CPB agree that, except as provided in Section 4.6(b), all obligations of, *inter alia*, clearance, payment or attribution to third Persons, including, by way of example and not limitation, music publishers and performing rights organizations (PROs) for use of the musical compositions embodied in Sound Recordings, shall be solely the responsibility of CPB and the Covered Entities.

(b) SoundExchange and CPB agree that all obligations of distribution of the License Fee to Copyright Owners and Performers in accordance with 37 C.F.R. 380.4(g) shall be solely the responsibility of SoundExchange. In making such distribution, SoundExchange has discretion to allocate the License Fee between Section 112 and 114 in the same manner as the majority of other webcasting royalties.

### Article 5

#### Reporting, Auditing and Confidentiality

5.1 *Reporting.* CPB and Covered Entities shall submit reports of use concerning Web Site Performances as set forth in Attachments 1 and 2.

5.2 *Verification of Information.* The Parties hereby agree to the terms set forth in 37 CFR 380.4(h) and 380.6 as if those Sections (and the applicable definitions provided in 37 CFR 380.2) were set forth herein. The exercise by SoundExchange of any right under this Section 5.2 shall not prejudice any other rights or remedies of SoundExchange.

5.3 *Confidentiality.* The Parties hereby agree to the terms set forth in 37 CFR § 380.5 as if that Section (and the applicable definitions provided in 37 CFR § 380.2) were set forth herein, except that:

(a) The following shall be added to the end of the first sentence of § 380.5(b): “or documents or information that become publicly known through no fault of SoundExchange or are known by SoundExchange when disclosed by CPB”;

(b) The following shall be added at the end of § 380.5(c): “and enforcement of the terms of this Agreement”; and

(c) The following shall be added at the end of § 380.5(d)(4): “subject to the provisions of Section 2.3 of this Agreement”

#### Article 6

##### Non-Participation In Further Proceedings

CPB and any Covered Entity making Web Site Transmissions in reliance on this Agreement shall not directly or indirectly participate as a party, *amicus curiae* or otherwise, or in any manner give evidence or otherwise support or assist, in any further proceedings to determine royalty rates and terms for digital audio transmission or the reproduction of Ephemeral Phonorecords under Section 112 or 114 of the Copyright Act for all or any part of the Term, including any appeal of the Final Determination of the Copyright Royalty Judges, published in the **Federal Register** at 72 FR 24084 (May 1, 2007), any proceedings on remand from such an appeal, or any other related proceedings, unless subpoenaed on petition of a third party (without any action by CPB or a Covered Entity to encourage such a petition) and ordered to testify in such proceeding. Notwithstanding anything to the contrary herein, any entity that is eligible to be treated as a “Covered Entity” but that does not elect to be treated as a Covered Entity may elect to participate in such proceedings.

#### Article 7

##### Term and Termination

7.1 *Term.* The term of this Agreement commenced as of January 1, 2005, and ends as of December 31, 2010 (“*Term*”). As conditions precedent to reliance on the terms of this Agreement by any Covered Entity, (a) CPB must pay the License Fee as and when specified in Section 4.1, and (b) NPR must withdraw its appeal of the Final Determination of the Copyright Royalty Judges, published in the **Federal Register** at 72 FR 24084 (May 1, 2007), which it has agreed to do within ten (10) days after the publication of this Agreement in the **Federal Register**.

7.2 *Mutual Termination.* This Agreement may be terminated in writing upon mutual agreement of the Parties.

##### 7.3 *Consequences of Termination.*

(a) *Survival of Provisions.* In the event of the expiration or termination of this Agreement for any reason, the terms of this Agreement shall immediately become null and void, and cannot be relied upon for making any further Web Site Performances or Ephemeral Phonorecords, except that (i) Articles 6 and 8 and Sections 2.3, 5.2 and 7.3 shall remain in full force and effect; and (ii) Article 4 and Section 5.1 shall remain in effect after the expiration or termination of this Agreement to the extent obligations under Article 4 or Section 5.1 accrued prior to any such termination or expiration.

(b) *Applicability of Copyright Law.* Any Web Site Performances made by a Covered Entity or other Originating Public Radio Station in violation of the terms of this Agreement or Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with this Agreement), outside the scope of this Agreement, or after the expiration or termination of this Agreement for any reason shall be fully subject to, among other things, the copyright owners’ rights under 17 U.S.C. 106(6), the remedies in 17 U.S.C. 501 *et seq.*, the provisions of 17 U.S.C. 112(e) and 114, and their implementing regulations unless the Parties have entered into a new agreement for such Web Site Performances.

#### Article 8

##### Miscellaneous

8.1 *Applicable Law and Venue.* This Agreement shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising directly or indirectly from or in connection with this Agreement shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC. The Parties and Covered Entities, to the extent permitted under their state or tribal law, consent to the jurisdiction and venue of the foregoing court and consent that any process or notice of motion or other application to said court or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the Person for which it is intended at its address set forth in this Agreement (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

8.2 *Rights Cumulative.* The remedies provided in this Agreement and available under applicable law shall be cumulative and shall not preclude assertion by any Party of any other rights or the seeking of any other remedies against the other Party hereto. This Agreement shall not constitute a waiver of any violation of Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with this Agreement). No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. Neither this Agreement nor any such failure or delay shall give rise to any defense in the nature of laches or estoppel. No single or partial exercise of any right, power or privilege granted under this Agreement or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by either Party of full performance by the other Party in any one or more instances shall be a waiver of the right to require full and complete performance of this Agreement and of obligations under applicable law thereafter or of the right to exercise the remedies of SoundExchange under Section 3.4.

8.3 *Severability.* Whenever possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under applicable law, such provisions shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

8.4 *Amendment.* This Agreement may be modified or amended only by a writing signed by the Parties.

8.5 *Entire Agreement.* This Agreement expresses the entire understanding of the Parties and supersedes all prior and contemporaneous agreements and undertakings of the Parties with respect to the subject matter hereof.

8.6 *Headings.* The titles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

In witness whereof, the Parties hereto have executed this Agreement as of the date first above written.

#### Attachment 1

##### Reporting

1. *Definitions.* The following terms shall have the meaning set forth below for purposes of this Attachment 1. All other capitalized terms shall have the meaning set forth in Article 1 of the Agreement.

(a) “*Content Logs*” shall have the meaning set forth in Section 4(a)(ii) of this Attachment 1.

(b) “*Current Period*” shall mean the period commencing with the first day after the end of the Historic Period and continuing to the end of the Term.

(c) “*Historic Period*” shall mean the period from April 1, 2004 through the last day of the month of the Execution Date.

(d) “*Major Format Group*” shall mean each of the following format descriptions characterizing the programming offered by various Covered Entities: (i) Classical; (ii) jazz; (iii) music mix; (iv) news and information; (v) news/classical; (vi) news/jazz; (vii) news/music mix; and (viii) adult album alternative. A Covered Entity’s Major Format Group is determined based on the format description best describing the programming of the principal broadcast service offered by the Covered Entity and will include all channels streamed.

(e) “*Reporting Data*” shall mean, for each Sound Recording for which Reporting Data is to be provided, (1) the relevant Covered Entity (including call sign and community of license of any terrestrial broadcast station and any Side Channel(s)); (2) the title of the song or track performed; (3) the featured recording artist, group, or orchestra; (4) the title of the commercially available album or other product on which the Sound Recording is found; (5) the marketing label of the commercially available album or other product on which the sound recording is found; and (6) play frequency.

(f) “*Specified Reports*” are reports that provide Reporting Data concerning over-the-air performances of Sound Recordings that are also Web Site Performances by an

Originating Public Radio Station. The Parties agree that such reports will initially be the ones provided by Mediaguide, Inc. or a successor thereto ("Mediaguide"). In the event that Mediaguide, or other agreed-upon source of Specified Reports, should cease to provide Reporting Data that satisfy the function of such reports hereunder, the Parties shall promptly identify and agree upon an alternative vendor of reports, or an alternative approach to providing Reporting Data to SoundExchange, provided that such alternative reports or approaches are available on commercial terms comparable to Mediaguide reports.

2. General.

All data required to be provided hereunder shall be provided to SoundExchange electronically in the manner provided in 37 CFR 370.3(d), except to the extent the parties agree otherwise. CPB shall consult with SoundExchange in advance concerning the content and format of all data to be provided hereunder, and shall provide data that is accurate, to the best of CPB's and the relevant Covered Entity's knowledge, information and belief. The methods used to make estimates, predictions and projections of data shall be subject to SoundExchange's prior written approval, which shall not be unreasonably withheld.

3. Data for the Historic Period.

(a) For 2004. CPB and SoundExchange shall use reasonable efforts to obtain available Specified Reports regarding Covered Entities for the period April 1, 2004 through December 31, 2004. NPR has previously provided SoundExchange with all available Music ATH data from the Music Webcasting Report dated September, 2004, in the form of an Excel spreadsheet. CPB represents that such data includes Music ATH data for all Major Format Groups.

(b) For 2005-2008.

(i) If Covered Entities have Reporting Data, or other information reportable under 37 CFR Part 370, with respect to Web Site Performances during the Historic Period, such Covered Entities shall provide such information to CPB, which shall provide the same to SoundExchange, as soon as practicable, and in any event by no later than sixty (60) days after the end of the Historic Period. Such data shall be provided in a format consistent with Attachment 2.

(ii) CPB and SoundExchange shall use reasonable efforts to obtain available Specified Reports regarding Covered Entities for the Historic Period. CPB and SoundExchange shall each pay one-half of the costs for such Specified Reports.

(iii) CPB has previously provided SoundExchange with the Streaming Census Report dated October 18, 2007 which SoundExchange has accepted which includes estimates of total Music ATH during the Historic Period, and of the allocation thereof to Major Format Groups, Covered Entities and applicable period.

4. Data Collection and Reporting for the Current Period. CPB shall provide data regarding Web Site Performances during the Current Period to SoundExchange, and Covered Entities shall provide such data to CPB, consistent with the following terms:

(a) ATH and Content Logs. For each calendar quarter during the Current Period:

(i) Music ATH Reporting. CPB shall provide reports (the "ATH Reports") of Music ATH by Covered Entities reasonably representative of all Major Format Groups, having relatively high Music ATH among the set of Covered Entities, and representing at least 60% of the total Music ATH by the Covered Entities in 2009 and at least 80% of the total Music ATH by the Covered Entities in 2010. Such ATH reports shall be accompanied by the Content Logs described in Section 4(a)(ii) for the periods described therein for all Covered Entities for which ATH Reports are provided. All ATH Reports and Content Logs for a quarter shall be provided by CPB together in one single batch, but all data shall be broken out by Covered Entity and identify each Covered Entity's Major Format Group. The ATH Reports shall be in a form similar to the Streaming Census Report dated October 18, 2007, which reported two hundred ten million (210,000,000) total Music ATH for all Covered Entities for calendar year 2007, except as otherwise provided in this Section 4(a)(i). If the ATH Reports satisfy the requirements set forth above in this Section 4(a)(i), all Covered Entities shall be deemed in compliance with the terms of this Section 4(a)(i).

(ii) Reporting Period and Data. The information about Music ATH referenced in Section 4(a)(i) shall be collected from Covered Entities for two 7-consecutive-day reporting periods per quarter in 2009 and 2010. The first ATH Report shall be provided no later than 180 days after the Execution Date. Thereafter, the ATH Reports shall be provided within thirty (30) days of the end of each calendar quarter. During these reporting periods, Covered Entities described in Section 4(a)(i) above shall prepare logs containing Reporting Data for all their Web Site Performances ("Content Logs"). These Content Logs shall be compared with server-

based logs of Music ATH throughout the reporting period before the ATH Report is submitted to SoundExchange.

(iii) Additional Data Reporting. Each quarter, CPB shall, for Covered Entities representing the highest 20% of reported Music ATH in 2009 and the highest 30% of reported Music ATH in 2010, provide SoundExchange Reporting Data collected continuously during each 24 hour period for the majority of their Web Site Performances, along with the Covered Entity's Music ATH, for the relevant quarter. If during any calendar quarter of the Current Period, additional Covered Entities, in the ordinary course of business, collect Reporting Data continuously during each 24 hour period for the majority of their Web Site Performances, CPB shall provide SoundExchange such data, along with each such Covered Entity's Music ATH, for the relevant quarter.

(b) ATH and Format Surveys. CPB shall semiannually survey all Covered Entities to ascertain the number, format and Music ATH of all channels (including but not limited to Side Channels) over which such Covered Entities make Web Site Performances. CPB shall provide the results of such survey to SoundExchange within sixty (60) days after the end of the semiannual period to which it pertains.

(c) Consolidated Reporting. Each quarter, CPB shall provide the information required by this Section 4 in one delivery to SoundExchange, with a list of all Covered Entities indicating which are and are not reporting for such quarter.

(d) Timing. Except as otherwise provided above, all information required to be provided to SoundExchange under this Section 4 shall be provided as soon as practicable, and in any event by no later than sixty (60) days after the end of the quarter to which it pertains. Such data shall be provided in a format consistent with Attachment 2.

5. Development of Technological Solutions. During the Term, CPB and Covered Entities shall cooperate in good faith with efforts by SoundExchange to develop and test a technological solution that facilitates reporting.

Attachment 2

Reporting Format

1. Format for Reporting Data. All Reporting Data provided under Attachment 1, Sections 3(b)(i) and 4(a)(ii) shall be delivered to SoundExchange in accordance with the following format:

Column 1 .....	Station or Side Channel
Column 2 .....	Sound Recording Title
Column 3 .....	Featured Artist, Group or Orchestra
Column 4 .....	Album
Column 5 .....	Marketing Label
Column 6 .....	Play Frequency

2. Format for Music ATH. All Music ATH reporting by Covered Entities under the following provisions of Attachment 1 shall be delivered to SoundExchange in accordance with the following format:

a. Section 3(b)(i) (the "Historic Period")	
Column 1 .....	Station or Side Channel
Column 2 .....	Major Format Group
Column 3 .....	ATH

Column 4 .....	2004 and 2007
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b. Section 4(a)(i) (the "Current Period")	
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Column 1 .....	Station or Side Channel
Column 2 .....	Major Format Group
Column 3 .....	ATH
Column 4 .....	Reporting Period

3. *Major Format Groups.* All requirements to provide "Major Format Group" as that term is defined in Attachment 1, Section 1(d), shall correspond with one of the following:

Major format groups
Classical
Jazz
Music Mix
News and Information
News/Classical
News/Jazz
News/Music Mix
Adult Album Alternative

## Appendix B—Agreed Rates and Terms for Broadcasters

### Article 1—Definitions

1.1 *General.* In general, words used in the rates and terms set forth herein (the "Rates and Terms") and defined in 17 U.S.C. 112(e) or 114 or 37 CFR Part 380 shall have the meanings specified in those provisions as in effect on the date hereof, with such exceptions or clarifications set forth in Section 1.2.

#### 1.2 *Additional Definitions*

(a) "*Broadcaster*" shall mean a webcaster as defined in 17 U.S.C. 114(f)(5)(E)(iii) that (i) has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission; (ii) has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make Eligible Transmissions and related ephemeral recordings; (iii) complies with all applicable provisions of Sections 112(e) and 114 and applicable regulations; and (iv) is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i).

(b) "*Broadcaster Webcasts*" shall mean eligible nonsubscription transmissions made by a Broadcaster over the internet that are not Broadcast Retransmissions.

(c) "*Broadcast Retransmissions*" shall mean eligible nonsubscription transmissions made by a Broadcaster over the internet that are retransmissions of terrestrial over-the-air broadcast programming transmitted by the Broadcaster through its AM or FM radio station, including ones with substitute advertisements or other programming occasionally substituted for programming for which requisite licenses or clearances to transmit over the internet have not been obtained. For the avoidance of doubt, a Broadcast Retransmission does not include programming transmitted on an internet-only side channel.

(d) "*Eligible Transmission*" shall mean either a Broadcaster Webcast or a Broadcast Retransmission.

(e) "*Small Broadcaster*" shall mean a Broadcaster that, for any of its channels and stations (determined as provided in Section

4.1) over which it transmits Broadcast Retransmissions, and for all of its channels and stations over which it transmits Broadcaster Webcasts in the aggregate, in any calendar year in which it is to be considered a Small Broadcaster, meets the following additional eligibility criteria: (i) During the prior year it made Eligible Transmissions totaling less than 27,777 aggregate tuning hours; and (ii) during the applicable year it reasonably expects to make Eligible Transmissions totaling less than 27,777 aggregate tuning hours; provided that, one time during the period 2006–2015, a Broadcaster that qualified as a Small Broadcaster under the foregoing definition as of January 31 of one year, elected Small Broadcaster status for that year, and unexpectedly made Eligible Transmissions on one or more channels or stations in excess of 27,777 aggregate tuning hours during that year, may choose to be treated as a Small Broadcaster during the following year notwithstanding clause (i) above if it implements measures reasonably calculated to ensure that that it will not make Eligible Transmissions exceeding 27,777 aggregate tuning hours during that following year. As to channels or stations over which a Broadcaster transmits Broadcast Retransmissions, the Broadcaster may elect Small Broadcaster status only with respect to any of its channels or stations that meet all of the foregoing criteria.

(f) "*SoundExchange*" shall mean SoundExchange, Inc. and shall include its successors and assigns.

### Article 2—Agreement Pursuant to Webcaster Settlement Act of 2008

#### 2.1 *Availability of Rates and Terms.*

Pursuant to the Webcaster Settlement Act of 2008, and subject to the provisions set forth below, Broadcasters may elect to be subject to the rates and terms set forth herein (the "Rates and Terms") in their entirety, with respect to such Broadcasters' Eligible Transmissions and related ephemeral recordings, for all of the period beginning on January 1, 2006, and ending on December 31, 2015, in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, by complying with the procedure set forth in Section 2.2 hereof. Any person or entity that does not satisfy the eligibility criteria to be a Broadcaster must comply with otherwise applicable rates and terms.

2.2 *Election Process in General.* To elect to be subject to these Rates and Terms, in lieu of any royalty rates and terms that otherwise might apply under 17 U.S.C. 112(e) and 114, for all of the period beginning on January 1, 2006, and ending on December 31, 2015, a Broadcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at <http://www.soundexchange.com>) by the later of (i) March 31, 2009; (ii) 30 days after publication of these Rates and Terms in the **Federal Register**; or (iii) in the case of a Broadcaster that is not making Eligible Transmissions as of the publication of these Rates and Terms in the **Federal Register** but begins doing so at a later time, 30 days after the Broadcaster begins making such Eligible

Transmissions. On any such election form, the Broadcaster must, among other things, identify all its stations making Eligible Transmissions. If, subsequent to making an election, there are changes in the Broadcaster's corporate name or stations making Eligible Transmissions, or other changes in its corporate structure that affect the application of these Rates and Terms, the Broadcaster shall promptly notify SoundExchange thereof. Notwithstanding anything else in these Rates and Terms, a person or entity otherwise qualifying as a Broadcaster that has participated in any way in any appeal of the Final Determination of the Copyright Royalty Judges concerning royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2006, through December 31, 2010 published in the **Federal Register** at 72 FR 24084 (May 1, 2007) (the "Final Determination") or any proceeding before the Copyright Royalty Judges to determine royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2011, through December 31, 2015 (including Docket No. 2009–1 CRB Webcasting III and Docket No. 2009–2 CRB New Subscription II, as noticed in the **Federal Register** at 74 FR 318–20 (Jan. 5, 2009)) shall not have the right to elect to be treated as a Broadcaster or claim the benefit of these Rates and Terms, unless it withdraws from such proceeding prior to submitting to SoundExchange a completed and signed election form as contemplated by this Section 2.2.

2.3 *Election of Small Broadcaster Status.* A Broadcaster that elects to be subject to these Rates and Terms and qualifies as a Small Broadcaster may elect to be treated as a Small Broadcaster for any one or more calendar years that it qualifies as a Small Broadcaster. To do so, the Small Broadcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at <http://www.soundexchange.com>) by no later than January 31 of the applicable year, except that election forms for 2006–2009 shall be due by no later than the date for the election provided in Section 2.2. On any such election form, the Broadcaster must, among other things, certify that it qualifies as a Small Broadcaster; provide information about its prior year aggregate tuning hours and the formats of its stations (e.g., the genres of music they use); and provide other information requested by SoundExchange for use in creating a royalty distribution proxy. Even if a Broadcaster has once elected to be treated as a Small Broadcaster, it must make a separate, timely election in each subsequent year in which it wishes to be treated as a Small Broadcaster.

2.4 *Representation of Compliance and Non-waiver.* By electing to operate pursuant to the Rates and Terms, an entity represents and warrants that it qualifies as a Broadcaster and/or Small Broadcaster, as the case may be. By accepting an election by a transmitting entity or payments or reporting made pursuant to these Rates and Terms, SoundExchange does not acknowledge that the transmitting entity qualifies as a Broadcaster or Small Broadcaster or that it

has complied with the requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act (including these Rates and Terms). It is the responsibility of each transmitting entity to ensure that it is in full compliance with applicable requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act. SoundExchange is not in a position to, and does not, make determinations as to whether each of the many services that rely on the statutory licenses is eligible for statutory licensing or any particular royalty payment classification, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, a Broadcaster agrees that SoundExchange's acceptance of its election, payment or reporting does not give or imply any acknowledgment that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms) and shall not be used as evidence that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms). SoundExchange and copyright owners reserve all their rights to take enforcement action against a transmitting entity that is not in compliance with all applicable requirements that are not inconsistent with these Rates and Terms.

*Article 3—Scope*

3.1 *In General.* In consideration for the payment of royalties pursuant to Article 4 and such other consideration specified herein, Broadcasters that have made a timely election to be subject to these Rates and Terms as provided in Section 2.2 are entitled to publicly perform sound recordings within the scope of the statutory license provided by Section 114 by means of Eligible Transmissions, and to make related ephemeral recordings for use solely for purposes of such Eligible Transmissions within the scope of Section 112(e), in accordance with and subject to the limitations set forth in these Rates and Terms and in strict conformity with the provisions of 17 U.S.C. 112(e) and 114 and their implementing regulations (except as otherwise specifically provided herein or waived by particular copyright owners with respect to their respective sound recordings), in lieu of other rates and terms from time to time applicable under 17 U.S.C. 112(e) and 114, for all of the period beginning on January 1, 2006, and ending on December 31, 2015.

3.2 *Applicability to All Eligible Services Operated by or for a Broadcaster.* If a Broadcaster has made a timely election to be subject to these Rates and Terms as provided in Section 2.2, these Rates and Terms shall apply to all Eligible Transmissions made by or for the Broadcaster that qualify as a Performance under 37 CFR 380.2(i), and related ephemeral recordings. For the avoidance of doubt, a Broadcaster may not rely upon these Rates and Terms for its Eligible Transmissions of one broadcast channel or station and upon different Section 112(e) and 114 rates and terms for its Eligible Transmissions of other broadcast channels or stations.

3.3 *No Implied Rights.* These Rates and Terms extend only to electing Broadcasters

and grant no rights, including by implication or estoppel, to any other person or except as specifically provided herein. Without limiting the generality of the foregoing, these Rates and Terms do not grant (i) any copyright ownership interest in any sound recording; (ii) any trademark or trade dress rights; (iii) any rights outside the United States (as defined in 17 U.S.C. 101); (iv) any rights of publicity or rights to any endorsement by SoundExchange or any other person; or (v) any rights with respect to performances or reproductions outside the scope of these Rates and Terms or the statutory licenses under 17 U.S.C. 112(e) and 114.

*Article 4—Royalties*

4.1 *Minimum Fees.* Each Broadcaster will pay an annual, nonrefundable minimum fee of \$500 for each of its individual channels, including each of its individual side channels, and each of its individual stations, through which (in each case) it makes Eligible Transmissions, for each calendar year or part of a calendar year during 2006–2015 during which the Broadcaster is a licensee pursuant to licenses under 17 U.S.C. 112(e) and 114, provided that a Broadcaster shall not be required to pay more than \$50,000 in minimum fees in the aggregate (for 100 or more channels or stations). For purposes of these Rates and Terms, each individual stream (e.g., HD radio side channels, different stations owned by a single licensee) will be treated separately and be subject to a separate minimum, except that identical streams for simulcast stations will be treated as a single stream if the streams are available at a single Uniform Resource Locator (URL) and performances from all such stations are aggregated for purposes of determining the number of payable performances hereunder. Upon payment of the minimum fee, the Broadcaster will receive a credit in the amount of the minimum fee against any royalties payable for the same calendar year for the same channel or station. In addition, an electing Small Broadcaster also shall pay a \$100 annual fee (the "Proxy Fee") to SoundExchange for the reporting waiver discussed in Section 5.1.

4.2 *Royalty Rates.* Royalties for Eligible Transmissions made pursuant to 17 U.S.C. 114, and the making of related ephemeral recordings pursuant to 17 U.S.C. 112(e), shall, except as provided in Section 5.3, be payable on a per-performance basis, as follows:

Year	Rate per performance
2006 .....	\$0.0008
2007 .....	0.0011
2008 .....	0.0014
2009 .....	0.0015
2010 .....	0.0016
2011 .....	0.0017
2012 .....	0.0020
2013 .....	0.0022
2014 .....	0.0023
2015 .....	0.0025

4.3 *MFN.* If at any time between publication of this Agreement in the **Federal**

**Register** and December 31, 2015, SoundExchange enters into an agreement with a Broadcaster specifying terms and conditions for the public performance of sound recordings within the scope of the statutory license provided by Section 114 by means of Eligible Transmissions, and the making of related ephemeral recordings within the scope of Section 112(e), upon principal financial or other material terms that are more favorable to such Broadcaster than the principal financial or other material terms set forth in these Rates and Terms, then SoundExchange shall afford electing Broadcasters hereunder the opportunity, in each Broadcaster's sole discretion, to take advantage of the terms and conditions of such agreement, in their entirety, in lieu of these Rates and Terms, with respect to the Broadcaster's Eligible Transmissions, from the date such more favorable terms became effective under such other agreement and continuing until the earlier of (i) the expiration of such other agreement, or (ii) December 31, 2015.

4.4 *Ephemeral Royalty.* The royalty payable under 17 U.S.C. 112(e) for any ephemeral reproductions made by a Broadcaster and covered hereby is deemed to be included within the royalty payments set forth above. SoundExchange has discretion to allocate payments hereunder between the statutory licenses under Sections 112(e) and 114 in the same manner as statutory webcasting royalties for the period 2011–2015, provided that such allocation shall not, by virtue of a Broadcaster's agreement to this Section 4.4, be considered precedent in any judicial, administrative, or other proceeding.

4.5 *Payment.* Payments of all amounts specified in these Rates and Terms shall be made to SoundExchange. Minimum fees and, where applicable, the Proxy Fee shall be paid by January 31 of each year. Once a Broadcaster's royalty obligation under Section 4.2 with respect to a channel or station for a year exceeds the minimum fee it has paid for that channel or station and year, thereby recouping the credit provided by Section 4.1, the Broadcaster shall make monthly payments at the per-performance rates provided in Section 4.2 beginning with the month in which the minimum fee first was recouped.

4.6 *Monthly Obligations.* Broadcasters must make monthly payments where required by Section 4.5, and provide statements of account and reports of use, for each month on the 45th day following the end of the month in which the Eligible Transmissions subject to the payments, statements of account, and reports of use were made.

4.7 *Past Periods.* Notwithstanding anything else in this Agreement, to the extent that a Broadcaster that elects to be subject to these Rates and Terms has not paid royalties for all or any part of the period beginning on January 1, 2006, and ending on February 28, 2009, any amounts payable under these Rates and Terms for Eligible Transmissions during such period for which payment has not previously been made shall be paid by no later than April 30, 2009, including late fees as provided in Section 4.8 from the original due date.

4.8 *Late Fees.* A Broadcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by SoundExchange in compliance with these Rates and Terms and applicable regulations by the due date. The amount of the late fee shall be 1.5% of a late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, compounded monthly, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully-compliant payment, statement of account or report of use is received by SoundExchange, provided that, in the case of a timely provided but noncompliant statement of account or report of use, SoundExchange has notified the Broadcaster within 90 days regarding any noncompliance that is reasonably evident to SoundExchange.

*Article 5—Reporting, Auditing and Confidentiality*

5.1 *Small Broadcasters.* While SoundExchange’s ultimate goal is for all webcasters to provide census reporting, requiring census reporting by the smallest Broadcasters at this time may present undue challenges for them, reduce compliance, and significantly increase SoundExchange’s distribution costs. Accordingly, on a transitional basis for a limited time and for purposes of these Rates and Terms only, and in light of the unique business and operational circumstances currently existing with respect to these entities, electing Small Broadcasters shall not be required to provide reports of their use of sound recordings for Eligible Transmissions and related ephemeral recordings. The immediately preceding sentence applies even if the Small Broadcaster actually makes Eligible Transmissions for the year exceeding 27,777 aggregate tuning hours, so long as it qualified as a Small Broadcaster at the time of its election for that year. Instead, SoundExchange shall distribute the aggregate royalties paid by electing Small Broadcasters based on proxy usage data in accordance with a methodology adopted by SoundExchange’s Board of Directors. In addition to minimum royalties hereunder, electing Small Broadcasters will pay to SoundExchange a \$100 Proxy Fee to defray costs associated with this reporting waiver, including development of proxy usage data. SoundExchange hopes that offering this option to electing Small Broadcasters will promote compliance with statutory license obligations and thereby increase the pool of royalties available to be distributed to copyright owners and performers. SoundExchange further hopes that selection of a proxy believed by SoundExchange to represent fairly the playlists of Small Broadcasters will allow payment to more copyright owners and performers than would be possible with any other reasonably available option. Small Broadcasters should assume that, effective January 1, 2016, they will be required to report their actual usage in full compliance with then-applicable regulations. Small Broadcasters are encouraged to begin to prepare to report their

actual usage by that date, and if it is practicable for them to do so earlier, they may wish not to elect Small Broadcaster status.

5.2 *Reporting by Other Broadcasters in General.* Broadcasters other than electing Small Broadcasters covered by Section 5.1 shall submit reports of use on a per-performance basis in compliance with the regulations set forth in 37 CFR Part 370, except that the following provisions shall apply notwithstanding the provisions of applicable regulations from time to time in effect:

(a) Broadcasters may pay for, and report usage in, a percentage of their programming hours on an aggregate tuning hour basis as provided in Section 5.3.

(b) Broadcasters shall submit reports of use to SoundExchange on a monthly basis.

(c) As provided in Section 4.6, Broadcasters shall submit reports of use by no later than the 45th day following the last day of the month to which they pertain.

(d) Except as provided in Section 5.3, Broadcasters shall submit reports of use to SoundExchange on a census reporting basis (i.e., reports of use shall include every sound recording performed in the relevant month and the number of performances thereof).

(e) Broadcasters shall either submit a separate report of use for each of their stations, or a collective report of use covering all of their stations but identifying usage on a station-by-station basis.

(f) Broadcasters shall transmit each report of use in a file the name of which includes (i) the name of the Broadcaster, exactly as it appears on its notice of use, and (ii) if the report covers a single station only, the call letters of the station.

(g) Broadcasters shall submit reports of use with headers, as presently described in 37 CFR 370.3(d)(7).

(h) Broadcasters shall submit a separate statement of account corresponding to each of their reports of use, transmitted in a file the name of which includes (i) the name of the Broadcaster, exactly as it appears on its notice of use, and (ii) if the statement covers a single station only, the call letters of the station.

5.3 *Limited ATH-Based Reporting.* Recognizing the operational challenge of census reporting, Broadcasters generally reporting pursuant to Section 5.2 may pay for, and report usage in, a percentage of their programming hours on an aggregate tuning hours basis, if (a) census reporting is not reasonably practical for the programming during those hours, and (b) if the total number of hours on a single report of use, provided pursuant to Section 5.2, for which this type of reporting is used is below the maximum percentage set forth below for the relevant year:

Year	Maximum percentage
2009 .....	20%
2010 .....	18%
2011 .....	16%
2012 .....	14%
2013 .....	12%
2014 .....	10%

Year	Maximum percentage
2015 .....	8%

To the extent that a Broadcaster chooses to report and pay for usage on an aggregate tuning hours basis pursuant to this Section 5.3, the Broadcaster shall (i) report and pay based on the assumption that the number of sound recordings performed during the relevant programming hours is 12 per hour; (ii) pay royalties (or recoup minimum fees) at the per-performance rates provided in Section 4.2 on the basis of clause (i) above; (iii) include aggregate tuning hours in reports of use provided pursuant to Section 5.2; and (iv) include in reports of use provided pursuant to Section 5.2 complete playlist information for usage reported on the basis of aggregate tuning hours. SoundExchange may distribute royalties paid on the basis of aggregate tuning hours hereunder in accordance with its generally-applicable methodology for distributing royalties paid on such basis.

5.4 *Verification of Information.* The provisions of applicable regulations for the retention of records and verification of statutory royalty payments (presently 37 CFR 380.4(h) and 380.6) shall apply hereunder. The exercise by SoundExchange of any right under this Section 5.4 shall not prejudice any other rights or remedies of SoundExchange or sound recording copyright owners.

5.5 *Confidentiality.* The provisions of applicable regulations concerning confidentiality (presently 37 CFR 380.5 (and the applicable definitions provided in 37 CFR 380.2)) shall apply hereunder.

*Article 6—Additional Provisions*

6.1 *Applicable Regulations.* To the extent not inconsistent with the Rates and Terms herein, all applicable regulations, including 37 CFR Parts 370 and 380, shall apply to activities subject to these Rates and Terms.

6.2 *Participation in Specified Proceedings.* A Broadcaster that elects to be subject to these Rates and Terms agrees that it has elected to do so in lieu of any different statutory rates and terms that may otherwise apply during any part of the 2006–2015 period and in lieu of participating at any time in a proceeding to set rates and terms for any part of the 2006–2015 period. Thus, once a Broadcaster has elected to be subject to these Rates and Terms, it shall not at any time participate as a party, intervenor, *amicus curiae* or otherwise, or give evidence or otherwise support or assist, in *Intercollegiate Broadcasting Sys. v. Copyright Royalty Board* (D.C. Circuit Docket Nos. 07–1123, 07–1168, 07–1172, 07–1173, 07–1174, 07–1177, 07–1178, 07–1179), *Digital Performance Right in Sound Recordings and Ephemeral Recordings* (Copyright Royalty Judges’ Docket No. 2009–1 CRB Webcasting III), *Digital Performance Right in Sound Recordings and Ephemeral Recordings for a New Subscription Service* (Copyright Royalty Judges’ Docket No. 2009–2 CRB New Subscription II) or any successor proceedings to determine royalty rates and terms for reproduction of ephemeral phonorecords or digital audio transmission under Section

112(e) or 114 of the Copyright Act for all or any part of the period 2006–2015, including any appeal of the foregoing or any proceedings on remand from such an appeal, unless subpoenaed on petition of a third party (without any action by a Broadcaster to encourage or suggest such a subpoena or petition) and ordered to testify or provide documents in such proceeding.

#### 6.3 *Use of Agreement in Future Proceedings.*

(a) Consistent with 17 U.S.C. 114(f)(5)(C), and except as specifically provided in Section 6.3(b), neither the Webcaster Settlement Act nor any provisions of these Rates and Terms shall be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of musical works or sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements by the Copyright Royalty Judges.

(b) Pursuant to 17 U.S.C. 114(f)(5)(C), submission of these Rates and Terms in a proceeding under 17 U.S.C. 114(f) is expressly authorized. For the avoidance of doubt, this Section 6.3(b) does not authorize participation in a proceeding by an entity that has agreed not to participate in the proceeding (pursuant to Section 6.2 or otherwise).

6.4 *Effect of Direct Licenses.* Any copyright owner may enter into a voluntary agreement with any Broadcaster setting alternative Rates and Terms governing the Broadcasters' transmission of copyrighted works owned by the copyright owner, and such voluntary agreement may be given effect in lieu of the Rates and Terms set forth herein.

6.5 *Default.* A Broadcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the Broadcaster that, unless the breach is remedied within 30 days from the date of receipt of notice, the Broadcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms will be automatically terminated. No such cure period shall apply before termination in case of material noncompliance that has been repeated multiple times so as to constitute a pattern of noncompliance, provided that SoundExchange has given repeated notices of noncompliance. Any transmission made by a Broadcaster in violation of these Rates and Terms or Section 112(e) or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with these Rates and Terms), outside the scope of these Rates and Terms, or after the expiration or termination of these Rates and Terms shall be fully subject to, among other things, the copyright owners' rights under 17 U.S.C. 106 and the remedies in 17 U.S.C. 501–506, and all limitations, exceptions and defenses available with respect thereto.

#### Article 7—Miscellaneous

##### 7.1 *Acknowledgement.*

(a) The parties acknowledge this agreement was entered into knowingly and willingly.

(b) This agreement is limited solely to webcasting royalties, and the parties acknowledge that it shall not be cited in connection with any efforts to obtain, and sets no precedent related to, over-the-air performance royalties.

(c) The parties further agree that the preceding acknowledgement in Section 7.1(a) does not in any way imply Broadcasters' agreement that the royalty rate standard set forth in 17 U.S.C. 114(f)(2)(B) is an appropriate rate standard to apply to Broadcasters. Broadcasters shall never be precluded by virtue of such acknowledgement from arguing in the context of future legislation or otherwise that a different royalty rate standard should apply to them, and SoundExchange shall never rely upon by such acknowledgement as a basis for arguing that the royalty rate standard set forth in 17 U.S.C. 114(f)(2)(B) should apply to Broadcasters.

7.2 *Applicable Law and Venue.* These Rates and Terms shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising directly or indirectly from or in connection with these Rates and Terms shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC. SoundExchange and Broadcasters consent to the jurisdiction and venue of the foregoing court and consent that any process or notice of motion or other application to said court or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the person for which it is intended at its last known address (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

7.3 *Rights Cumulative.* The rights, remedies, limitations, and exceptions provided in these Rates and Terms and available under applicable law shall be cumulative and shall not preclude assertion by any party of any other rights, defenses, limitations, or exceptions or the seeking of any other remedies against another party hereto. These Rates and Terms shall not constitute a waiver of any violation of Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent with these Rates and Terms). No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. No single or partial exercise of any right, power or privilege granted under these Rates and Terms or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by any party of full performance by another party in any one or more instances shall be a waiver of the right to require full and complete performance of these Rates and Terms and of obligations under applicable law thereafter.

7.4 *Entire Agreement.* These Rates and Terms represent the entire and complete

agreement between SoundExchange and a Broadcaster with respect to their subject matter and supersede all prior and contemporaneous agreements and undertakings of SoundExchange and a Broadcaster with respect to the subject matter hereof.

## Appendix C

### Agreed Rates and Terms

#### 1. *General*

(a) *Availability of Rates and Terms.* Pursuant to the Webcaster Settlement Act of 2008, and subject to the provisions of Section 2, Eligible Small Webcasters may elect to be subject to the rates and terms set forth herein (the "Rates and Terms") in their entirety, with respect to their eligible nonsubscription transmissions and related ephemeral recordings, in lieu of other rates and terms applicable under 17 U.S.C. 112(e) and 114, by complying with the procedure set forth in Section 2 hereof. Any person or entity that does not satisfy the eligibility criteria to be an Eligible Small Webcaster during any calendar year during the period 2006–2015 must comply with otherwise applicable rates and terms for that year.

(b) *Compliance.* Any Eligible Small Webcaster relying upon the statutory licenses set forth in 17 U.S.C. 112(e) and 114 shall comply with the requirements of those Sections, these Rates and Terms and other applicable regulations.

(c) *Effect of Direct Licenses.* These Rates and Terms are without prejudice to, and subject to, any voluntary agreements that an Eligible Small Webcaster may have entered into with any sound recording copyright owner.

(d) *Precedential Effect of Rates and Terms.* Eligible Small Webcasters agree that these Rates and Terms (including any royalty rates, rate structure, fees, definitions, terms, conditions, or notice and recordkeeping requirements set forth herein), shall not be admissible as evidence or otherwise taken into account in any administrative, judicial, or other government proceeding, except as specifically provided in this Section 1(d). This prohibition applies to, but is not limited to, those proceedings involving the setting or adjustment of the royalties payable for the public performance or reproduction in ephemeral phonorecords or copies of sound recordings, the determination of terms or conditions related thereto, or the establishment of notice or recordkeeping requirements. These Rates and Terms shall be considered as a compromise motivated by the unique business, economic and political circumstances of small webcasters, copyright owners, and performers rather than as matters that would have been negotiated in the marketplace between a willing buyer and a willing seller. Eligible Small Webcasters shall not, in any way, seek to use in any way these Rates and Terms in any such proceeding and further agree to take whatever steps are appropriate to prevent use of such rates and terms in those proceedings. SoundExchange may disclose, describe or explain any provision of these Rates and Terms in any proceeding without giving it precedential effect.

## 2. Election for Treatment as an Eligible Small Webcaster

(a) *Election Process in General.* An Eligible Small Webcaster that wishes to elect to be subject to these Rates and Terms with respect to its eligible nonsubscription transmissions and related ephemeral recordings, in lieu of any royalty rates and terms that otherwise might apply under 17 U.S.C. 112(e) and 114, for any calendar year that it qualifies as an Eligible Small Webcaster during the period beginning on January 1, 2006, and ending on December 31, 2015, shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at <http://www.soundexchange.com>) by no later than the first date on which the webcaster would be obligated under these Rates and Terms to make a royalty payment for such year. An Eligible Small Webcaster that fails to make a timely election shall pay royalties for the relevant year as otherwise provided under 17 U.S.C. 112 and 114.

(b) *Election of Microcaster Status.* An Eligible Small Webcaster that elects to be subject to these Rates and Terms and qualifies as a Microcaster may elect to be treated as a Microcaster for any one or more calendar years that it qualifies as a Microcaster. To do so, the Microcaster shall submit to SoundExchange a completed and signed election form (available on the SoundExchange Web site at <http://www.soundexchange.com>) by no later than the first date on which the Eligible Small Webcaster would be obligated under these Rates and Terms to make a royalty payment for each year it elects to be treated as a Microcaster. On any such election form, the Eligible Small Webcaster must, among other things, certify that it qualifies as a Microcaster; provide its prior year Gross Revenues, Third Party Participation Revenues and Aggregate Tuning Hours; and provide other information requested by SoundExchange for use in creating a royalty distribution proxy. Even if an Eligible Small Webcaster has once elected to be treated as a Microcaster, it must make a separate, timely election in each subsequent year in which it wishes to be treated as a Microcaster.

(c) *Participation in Proceedings.* Notwithstanding anything else in these Rates and Terms, a person or entity otherwise qualifying as an Eligible Small Webcaster that has participated in any way in any appeal of the Final Determination of the Copyright Royalty Judges concerning royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2006, through December 31, 2010 published in the **Federal Register** at 72 FR 24084 (May 1, 2007) (the "Final Determination") or any proceeding before the Copyright Royalty Judges to determine royalty rates and terms under Sections 112(e) and 114 of the Copyright Act for the period January 1, 2011, through December 31, 2015 (including Docket No. 2009-1 CRB Webcasting III and Docket No. 2009-2 CRB New Subscription II, as noticed in the **Federal Register** at 74 FR 318-20 (Jan. 5, 2009)) shall not have the right to elect to be treated as an Eligible Small Webcaster or claim the benefit of these Rates and Terms,

unless it withdraws from such proceeding and submits to SoundExchange a completed and signed election form within thirty (30) days after publication of these Rates and Terms in the **Federal Register**. An Eligible Small Webcaster that elects to be subject to these Rates and Terms for any one or more years agrees that it has elected to do so in lieu of any different statutory rates and terms that may otherwise apply during that year and in lieu of participating at any time in a proceeding to set rates and terms for any part of the 2006-2015 period. Thus, once an Eligible Small Webcaster has elected to be subject to these Rates and Terms it shall not at any time (even if it is no longer eligible, or has no longer elected to be treated, as an Eligible Small Webcaster) directly or indirectly participate as a party, *amicus curiae* or otherwise, or in any manner give evidence or otherwise support or assist, in any further proceedings to determine royalty rates and terms for reproduction of ephemeral phonorecords or digital audio transmission under Section 112(e) or 114 of the Copyright Act for all or any part of the period 2006-2015, including any appeal of the Final Determination, any proceedings on remand from such an appeal, any proceeding before the Copyright Royalty Judges to determine royalty rates and terms applicable to the statutory licenses under Sections 112(e) and 114 of the Copyright Act for the period 2011-2015, any appeal of such proceeding, or any other related proceedings.

(d) *Compliance.* By electing Eligible Small Webcaster and/or Microcaster status, a transmitting entity represents that it is eligible therefor and in compliance with all requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act. By accepting an election by a transmitting entity or payments or reporting made pursuant to these Rates and Terms, SoundExchange does not acknowledge that the transmitting entity qualifies as an Eligible Small Webcaster or Microcaster or that it has complied with the requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act (including these Rates and Terms). It is the responsibility of each transmitting entity to ensure that it is in full compliance with the requirements of the statutory licenses under Sections 112(e) and 114 of the Copyright Act. SoundExchange is not in a position to, and does not, make determinations as to whether each of the many services that rely on the statutory licenses is eligible for statutory licensing or any particular royalty payment classification, nor does it continuously verify that such services are in full compliance with all applicable requirements. Accordingly, an Eligible Small Webcaster agrees that SoundExchange's acceptance of its election, payment or reporting does not give or imply any acknowledgment that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms) and shall not be used as evidence that it is in compliance with the requirements of the statutory licenses (including these Rates and Terms). SoundExchange and copyright owners reserve all their rights to take enforcement action against a transmitting entity that is not in compliance with those requirements.

## 3. Royalty Rates for Eligible Small Webcasters

For eligible nonsubscription transmissions made by an Eligible Small Webcaster during the period 2006-2015, except an electing Microcaster, the royalty rate shall be—

(1) On any transmissions not exceeding 5,000,000 Aggregate Tuning Hours per month (equivalent to approximately 6,945 average simultaneous listeners, listening for thirty consecutive days, 24 hours a day), the greater of (i) ten percent (10%) of the Eligible Small Webcaster's first \$250,000 in Gross Revenues and twelve percent (12%) of any Gross Revenues in excess of \$250,000 during the applicable year; or (ii) seven percent (7%) of the Eligible Small Webcaster's Expenses during the applicable year; and

(2) On any transmissions in excess of 5,000,000 Aggregate Tuning Hours per month, the commercial webcasting rates provided in the Final Determination (for the period 2006-2010) or the then-applicable commercial webcasting rates under Sections 112(e) and 114 (for the period 2011-2015).

## 4. Minimum Annual Fees

(a) *In General.* For each year from 2006-2015, an Eligible Small Webcaster shall pay annual minimum fees as follows:

(1) \$500 for electing Microcasters, which shall constitute the only royalty payable hereunder by an electing Microcaster, except that an electing Microcaster also shall pay a \$100 annual fee (the "Proxy Fee") to SoundExchange for the reporting waiver discussed in Section 6(a), and the provisions of Section 5(d) shall apply;

(2) \$2,000, for Eligible Small Webcasters other than electing Microcasters that had Gross Revenues during the prior year of not more than \$50,000 and reasonably expect Gross Revenues of not more than \$50,000 during the applicable year; or

(3) \$5,000, for Eligible Small Webcasters that had Gross Revenues during the prior year of more than \$50,000 or reasonably expect Gross Revenues to exceed \$50,000 during the applicable year.

(b) The amounts specified in Section 4(a) shall be paid by January 31 of each year.

(c) All minimum fees (but not the Proxy Fee for the reporting waiver for Microcasters) shall be fully creditable toward royalties due for the year for which such amounts are paid, but not any other year.

## 5. Payments

(a) *Qualification to Make Current Payments as Eligible Small Webcaster.* If the Gross Revenues, plus the Third Party Participation Revenues and revenues from the operation of New Subscription Services, of a transmitting entity and its Affiliates have not exceeded \$1,250,000 in any year, and the transmitting entity reasonably expects to be an Eligible Small Webcaster in a given year, the transmitting entity may make payments for that year on the assumption that it will be an Eligible Small Webcaster for that year for so long as that assumption is reasonable.

(b) *True-Up Between Gross Revenues and Expenses.* In making monthly payments, an Eligible Small Webcaster shall, at the time a payment is due, calculate its Gross Revenues and Expenses for the year through the end of the applicable month and pay the applicable

percentage of Gross Revenues or Expenses, as the case may be, for the year through the end of the applicable month, less any amounts previously paid for such year. For the purposes of illustration only, if an Eligible Small Webcaster has \$100,000 in Gross Revenues and \$2,000 in Expenses in Month 1, the monthly payment shall be \$10,000 (10% of aggregate gross yearly revenue up to \$250,000). In Month 2, if the Eligible Small Webcaster has \$100,000 in Gross Revenue and \$2,000 in Expenses, then the Eligible Small Webcaster shall pay \$10,000 in monthly payments (10% of aggregate gross yearly revenue for the year up to \$250,000 less the \$10,000 paid in Month 1). In Month 3, if the Eligible Small Webcaster has \$100,000 in Gross Revenue and \$2,000 in Expenses, then the Eligible Small Webcaster shall pay \$11,000 in monthly payments (10% of aggregate gross yearly revenue for the year up to \$250,000 plus 12% of aggregate gross yearly revenue for the amount above \$250,000, less prior payments).

(c) *Effect if Eligibility Condition is Exceeded.* Except as provided in Section 5(e), if a transmitting entity has made payments for any year based on the assumption that it will qualify as an Eligible Small Webcaster, but the actual Gross Revenues plus Third Party Participation Revenues and revenues from the operation of New Subscription Services in that year of the transmitting entity and its Affiliates exceed the Gross Revenue threshold provided in Section 8(e), then the transmitting entity shall receive a six (6) month grace period measured from the first month following the month in which such revenues exceed \$1,250,000 (the "Grace Period"). During the Grace Period, the transmitting entity shall pay the rates as specified in Section 3(a). From and after the date the Grace Period has expired, the transmitting entity will pay the commercial webcasting rates provided in the Final Determination (for 2006–2010) or the then-applicable commercial webcasting rates under Sections 112(e) and 114 (for 2011–2015), only for periods after the expiration of the Grace Period.

(d) *Effect if Microcaster Eligibility Condition is Exceeded.* Except as provided in Section 5(e), if a transmitting entity has made payments and not reported usage for any year based on the assumption that it will qualify as a Microcaster, but the actual Gross Revenues plus Third Party Participation Revenues, Expenses, or Aggregate Tuning Hours in that year of the transmitting entity and its Affiliates exceed a threshold provided in Section 8(h), then the transmitting entity's payments for that entire year shall retroactively be adjusted as provided in this Section 5(d). By no later than January 31 of the following year, the transmitting entity shall notify SoundExchange whether it elects to be treated for the entire year in which such threshold was exceeded as either an Eligible Small Webcaster but not a Microcaster, or as a transmitting entity fully subject to the Final Determination (for 2006–2010) or to the then-applicable commercial webcasting rates under Sections 112(e) and 114 (for 2011–2015) (whichever of the foregoing it elects, the "Elected Status"). At the same time, the transmitting entity must pay all amounts that

would have been due for that year if it had originally elected the Elected Status, less any royalties previously paid hereunder as a Microcaster for that year (but not less the Proxy Fee). The transmitting entity need not provide reports of use for that year, and SoundExchange may distribute the royalties paid by the transmitting entity for that year based on the proxy usage data applicable to Microcasters. For the year following the year in which such threshold was exceeded, the transmitting entity must comply with applicable requirements as either an Eligible Small Webcaster but not a Microcaster, or as a transmitting entity fully subject to the Final Determination (for 2006–2010) or to the then-applicable commercial webcasting rates under Sections 112(e) and 114 (for 2011–2015).

(e) *True-Up for Certain Corporate Transactions.* If a transmitting entity that has at any time elected to be treated as an Eligible Small Webcaster under these Rates and Terms, and has not ceased to qualify as an Eligible Small Webcaster through growth in its business and thereafter paid full commercial webcasting rates for a period of at least twelve (12) full months (after any Grace Period applicable under Section 5(c)), becomes a party to or subject of any merger, sale of stock or all or substantially all of its assets, or other corporate restructuring, such that, upon the consummation of such transaction, the transmitting entity or its successor (including a purchaser of all or substantially all of its assets) does not qualify, or reasonably expect to qualify, as an Eligible Small Webcaster for the then-current year, then the transmitting entity or its successor shall, within thirty (30) days after the consummation of such transaction, pay to SoundExchange the difference between (1) the payment the transmitting entity would have been required to make under the commercial webcasting rates provided in the Final Determination (for 2006–2010) or under the then-applicable commercial webcasting rates under Sections 112(e) and 114 (for 2011–2015) for each year in which it elected to be treated as an Eligible Small Webcaster under these Rates and Terms, from January 1, 2006 through the date of such transaction, and (2) the royalty payments it made under these Rates and Terms for each such year. The burden of proof shall be on the transmitting entity or its successor to demonstrate its actual usage for purposes of determining the payment it would have been required to make under such commercial webcasting rates for each such year. If the transmitting entity has insufficient records to determine the payment it would have been required to make under such commercial webcasting rates for each such year, then such calculation shall be made on the basis of the assumption that it made transmissions of 5,000,000 Aggregate Tuning Hours per month, and 15.375 performances per each such Aggregate Tuning Hour, during the relevant period.

(f) *Remittance.* Payments of all amounts specified in these Rates and Terms shall be made to SoundExchange as provided in Section 7(a). Eligible Small Webcasters shall not be entitled to a refund of any amounts paid to SoundExchange, but if an Eligible

Small Webcaster makes an overpayment of royalties (other than payments of minimums) during a year, SoundExchange shall, at its discretion, either refund the overpayment or give the Eligible Small Webcaster a credit in the amount of its overpayment, which credit shall be available to be applied to its payments for the immediately following year only.

(g) *Ephemeral Recordings Royalty.* SoundExchange has discretion to allocate payments hereunder between the statutory licenses under Sections 112(e) and 114 in the same manner as the majority of other webcasting royalties.

(h) *Past Periods.* Notwithstanding anything else in this Agreement, to the extent that an Eligible Small Webcaster that elects to be subject to these Rates and Terms has not paid royalties for all or any part of the period beginning on January 1, 2006, and ending on February 28, 2009, any amounts payable under these Rates and Terms for eligible nonsubscription transmissions during such period for which payment has not previously been made shall be paid by no later than April 30, 2009, including late fees as provided in Section 5(i) from the original due date.

(i) *Late Fee.* An Eligible Small Webcaster shall pay a late fee for each instance in which any payment, any statement of account or any report of use is not received by SoundExchange in full compliance with these Rates and Terms and applicable regulations by the due date. The amount of the late fee shall be 1.5% of a late payment, or 1.5% of the payment associated with a late statement of account or report of use, per month, or the highest lawful rate, whichever is lower. The late fee shall accrue from the due date of the payment, statement of account or report of use until a fully-compliant payment, statement of account or report of use is received by SoundExchange.

## 6. Notice and Recordkeeping

(a) *Microcasters.* SoundExchange believes that accurate census reporting by services is the best way for it to obtain data for making fair royalty distributions to copyright owners and performers, and for that reason, Section 6(b) generally requires census reporting by Eligible Small Webcasters. However, SoundExchange has observed a low level of compliance by the smallest webcasters with the payment and notice and recordkeeping requirements imposed by applicable regulations. Moreover, where SoundExchange has received reports of use from the smallest webcasters, it has had to devote levels of resources to processing those reports that are high relative to the usage and payment involved. While SoundExchange's ultimate goal is for all webcasters to provide census reporting, requiring census reporting by the smallest webcasters at this time may further reduce compliance and significantly increase distribution costs.

Accordingly, on a transitional basis for a limited time and for purposes of these Rates and Terms only, and in light of the unique business and operational circumstances currently existing with respect to these services, electing Microcasters shall not be required to provide reports of their use of

sound recordings for eligible nonsubscription transmissions and related ephemeral recordings. Instead, SoundExchange shall distribute the aggregate royalties paid by electing Microcasters based on proxy usage data in accordance with a methodology adopted by SoundExchange's Board of Directors. In addition to minimum royalties hereunder, electing Microcasters will pay to SoundExchange a \$100 Proxy Fee to defray costs associated with this reporting waiver, including development of proxy usage data. SoundExchange hopes that offering this option to electing Microcasters will promote compliance with statutory license obligations and thereby increase the pool of royalties available to be distributed to copyright owners and performers. SoundExchange further hopes that selection of a proxy believed by SoundExchange to represent fairly the playlists of the smallest webcasters will allow payment to more copyright owners and performers than would be possible with any other reasonably available option. Microcasters should assume that, effective January 1, 2016, they will be required to report their actual usage in full compliance with then-applicable regulations. Microcasters are encouraged to begin to prepare to report their actual usage by that date, and if it is practicable for them to do so earlier, they may wish not to elect Microcaster status.

(b) *Reports to Be Provided by other Eligible Small Webcasters.* As a condition of these Rates and Terms, except as provided in Section 6(a), an Eligible Small Webcaster shall submit reports of use of sound recordings to SoundExchange covering the following for all of its eligible nonsubscription transmissions, on a channel by channel basis:

- (1) The featured recording artist, group or orchestra;
- (2) The sound recording title;
- (3) The title of the retail album or other product (or, in the case of compilation albums created for commercial purposes, the name of the retail album upon which the track was originally released);
- (4) The marketing label of the commercially available album or other product on which the sound recording is found;
- (5) The International Standard Recording Code ("ISRC") embedded in the sound recording, if available;
- (6) The copyright owner information provided in the copyright notice on the retail album or other product (e.g., following the symbol (P) (the letter P in a circle) or, in the case of compilation albums created for commercial purposes, in the copyright notice for the individual track);
- (7) The Aggregate Tuning Hours, on a monthly basis, for each channel provided by the Eligible Small Webcaster as computed by a recognized industry ratings service or as computed by the Eligible Small Webcaster from its server logs;
- (8) The channel for each transmission of each sound recording; and
- (9) The start date and time of each transmission of each sound recording.

If at any time during the period through December 31, 2015, Eligible Small

Webcasters would be required under regulations applicable to the Section 112(e) or 114 statutory license to provide reports of use more extensive than provided in this Section 6(b), then any incremental information required by such regulations shall be provided under these Rates and Terms in addition to the information identified above.

(c) *Provision of Reports.* Reports of use described in Section 6(b) shall be provided at the same time royalty payments are due under Section 7(a).

(d) *Server Logs.* To the extent not already required by the current regulations set forth in 37 CFR Part 380, all Eligible Small Webcasters shall retain for a period of at least four (4) years server logs sufficient to substantiate all information relevant to eligibility, rate calculation and reporting hereunder. To the extent that a third-party web hosting or service provider maintains equipment or software for an Eligible Small Webcaster and/or such third party creates, maintains, or can reasonably create such server logs, the Eligible Small Webcaster shall direct that such server logs be created and maintained by said third party for a period of at least four years and/or that such server logs be provided to, and maintained by, the Eligible Small Webcaster. SoundExchange shall have access to the same pursuant to applicable regulations for the verification of statutory royalty payments (presently 37 CFR 380.6).

#### 7. Additional Provisions

(a) *Monthly Obligations.* All Eligible Small Webcasters except electing Microcasters must make monthly payments, provide statements of account, and submit reports of use as described in Section 6 for each month on the forty-fifth (45th) day following the month in which the transmissions subject to the payments, statements of account, and reports of use were made.

(b) *Proof of Eligibility.* At all times, the burden of proof shall be on the Eligible Small Webcaster to demonstrate eligibility for the Rates and Terms set forth herein and for Microcaster status, and at all times the obligation shall be on the Eligible Small Webcaster to maintain records sufficient to determine eligibility. Failure to retain sufficient records to determine eligibility shall constitute a violation of these Rates and Terms and shall render a transmitting entity ineligible for the rates and terms set forth herein. An Eligible Small Webcaster that elects to be governed by the rates and terms set forth herein shall make available to SoundExchange, within thirty (30) days after SoundExchange's written request at any time during the three (3) years following a period during which it is to be treated as an Eligible Small Webcaster for purposes of these Rates and Terms, sufficient evidence to support its eligibility as an Eligible Small Webcaster and/or Microcaster during that period, including but not limited to an accounting of all Affiliate and Third Party Participation Revenue, and Aggregate Tuning Hours on a monthly basis. Any proof of eligibility provided hereunder shall be provided with a certification signed by the Eligible Small Webcaster if a natural person, or by an officer

or partner of the Eligible Small Webcaster if the Eligible Small Webcaster is a corporation or partnership, stating, under penalty of perjury, that the information provided is accurate and the person signing is authorized to act on behalf of the Eligible Small Webcaster.

(c) *Default.* An Eligible Small Webcaster shall comply with all the requirements of these Rates and Terms. If it fails to do so, SoundExchange may give written notice to the Eligible Small Webcaster that, unless the breach is remedied within thirty days from the date of notice and not repeated, the Eligible Small Webcaster's authorization to make public performances and ephemeral reproductions under these Rates and Terms will be automatically terminated. Such termination renders any public performances and ephemeral reproductions as to which the breach relates actionable as acts of infringement under 17 U.S.C. 501 and fully subject to the remedies provided by 17 U.S.C. 502–506.

(d) *Applicable Regulations.* To the extent not inconsistent with the terms herein, use of sound recordings by Eligible Small Webcasters shall be governed by, and Eligible Small Webcasters shall comply with, applicable regulations, including 37 CFR Part 380. Without limiting the foregoing, the provisions of applicable regulations for the retention of records and verification of statutory royalty payments (presently 37 CFR 380.4(h) and 380.6) shall apply hereunder. Eligible Small Webcasters shall cooperate in good faith with any such verification, and the exercise by SoundExchange of any right with respect thereto shall not prejudice any other rights or remedies of SoundExchange or sound recording copyright owners.

(e) *Applicable Law and Venue.* These Rates and Terms shall be governed by, and construed in accordance with, the laws of the District of Columbia (without giving effect to conflicts of law principles thereof). All actions or proceedings arising directly or indirectly from or in connection with these Rates and Terms shall be litigated only in the United States District Court for the District of Columbia located in Washington, DC. SoundExchange and Eligible Small Webcasters consent to the jurisdiction and venue of the foregoing court and consent that any process or notice of motion or other application to said court or a judge thereof may be served inside or outside the District of Columbia by registered mail, return receipt requested, directed to the person for which it is intended at its last known address (and service so made shall be deemed complete five (5) days after the same has been posted as aforesaid) or by personal service or in such other manner as may be permissible under the rules of that court.

(f) *Rights Cumulative.* The remedies provided in these Rates and Terms and available under applicable law shall be cumulative and shall not preclude assertion by any party of any other rights or the seeking of any other remedies against another party hereto. These Rates and Terms shall not constitute a waiver of any violation of Section 112 or 114 or their implementing regulations (except to the extent such implementing regulations are inconsistent

with these Rates and Terms). No failure to exercise and no delay in exercising any right, power or privilege shall operate as a waiver of such right, power or privilege. Neither these Rates and Terms nor any such failure or delay shall give rise to any defense in the nature of laches or estoppel. No single or partial exercise of any right, power or privilege granted under these Rates and Terms or available under applicable law shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. No waiver by any party of full performance by another party in any one or more instances shall be a waiver of the right to require full and complete performance of these Rates and Terms and of obligations under applicable law thereafter.

(g) *Entire Agreement.* These Rates and Terms represent the entire and complete agreement between SoundExchange and an Eligible Small Webcaster with respect to their subject matter and supersede all prior and contemporaneous agreements and undertakings of SoundExchange and an Eligible Small Webcaster with respect to the subject matter hereof.

### 8. Definitions

As used in these Rates and Terms, the following terms shall have the following meanings:

(a) An “*Affiliate*” of a transmitting entity is a person or entity that directly, or indirectly through one or more intermediaries—

(1) Has securities or other ownership interests representing more than 50 percent of such person’s or entity’s voting interests beneficially owned by—

(A) Such transmitting entity; or

(B) A person or entity beneficially owning securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity;

(2) Beneficially owns securities or other ownership interests representing more than 50 percent of the voting interests of the transmitting entity; or

(3) Otherwise Controls, is Controlled by, or is under common Control with the transmitting entity.

(b) The term “*Aggregate Tuning Hours*” has the meaning given that term in 37 CFR § 380.2(a), as published in the Final Determination.

(c) A “*Beneficial Owner*” of a security or other ownership interest is any person or entity who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, has or shares voting power with respect to such security or other ownership interest.

(d) The term “*Control*” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person or entity, whether through the ownership of voting securities, by contract or otherwise.

(e) An “*Eligible Small Webcaster*” is a person or entity that (i) has obtained a compulsory license under 17 U.S.C. 112(e) and 114 and the implementing regulations therefor to make eligible nonsubscription transmissions over the Internet and related ephemeral recordings; (ii) complies with all

provisions of Sections 112(e) and 114 and applicable regulations; (iii) is not a noncommercial webcaster as defined in 17 U.S.C. 114(f)(5)(E)(i); and (iv) in any calendar year in which it is to be considered an Eligible Small Webcaster has, together with its Affiliates, annual Gross Revenues plus Third Party Participation Revenues and revenues from the operation of New Subscription Services of not more than \$1,250,000. In determining qualification under this Section 8(e), a transmitting entity shall exclude—

(1) Income of an Affiliate that is a natural person, other than income such natural person derives from another Affiliate of such natural person that is either a media or entertainment related business that provides audio or other entertainment programming, or a business that primarily operates an Internet or wireless service; and

(2) Gross Revenues of any Affiliate that is not engaged in a media or entertainment related business that provides audio or other entertainment programming, and is not engaged in a business that primarily operates an Internet or wireless service, if the only reason such Affiliate is Affiliated with the transmitting entity is that (i) it is under common Control of the same natural person or (ii) both are beneficially owned by the same natural person.

In the case of a person or entity that offers both eligible nonsubscription transmissions (as defined in 17 U.S.C. 114(j)(6)) and a New Subscription Service, these Rates and Terms apply only to the Eligible Small Webcaster’s eligible nonsubscription transmissions and not the New Subscription Service.

(f) The term “*Expenses*”—

(1) Means all costs incurred (whether actually paid or not) by an Eligible Small Webcaster, except that capital costs shall be treated as Expenses allocable to a period only to the extent of charges for amortization or depreciation of such costs during such period as are properly allocated to such period in accordance with United States generally accepted accounting principles (“GAAP”);

(2) Includes the fair market value of all goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property) provided by an Eligible Small Webcaster to any third party in lieu of a cash payment and the fair market value of any goods or services purchased for or provided to an Eligible Small Webcaster by an Affiliate of such webcaster; and

(3) Shall not include—

(A) The imputed value of personal services rendered by up to 5 natural persons who are, directly or indirectly, owners of the Eligible Small Webcaster, and for which no compensation has been paid;

(B) The imputed value of occupancy of residential property for which no Federal income tax deduction is claimed as a business expense;

(C) Costs of purchasing phonorecords of sound recordings used in the Eligible Small Webcaster’s service;

(D) Royalties paid for the public performance of sound recordings; or

(E) The reasonable costs of collecting overdue accounts receivable, provided that

the reasonable costs of collecting any single overdue account receivable may not exceed the actual account receivable.

(g) The term “*Gross Revenues*”—(1) Means all revenue of any kind earned by a person or entity, less—

(A) Revenue from sales of phonorecords and digital phonorecord deliveries of sound recordings;

(B) The person or entity’s actual costs of other products and services actually sold through a service that makes eligible nonsubscription transmissions, and related sales and use taxes imposed on such transactions, costs of shipping such products, allowance for bad debts, and credit card and similar fees paid to unrelated third parties;

(C) Revenue from the operation of a New Subscription Service for which royalties are paid in accordance with provisions of 17 U.S.C. 112 and 114; and

(D) Revenue from the sale of assets in connection with the sale of all or substantially all of the assets of such person’s or entity’s business, or from the sale of capital assets; and

(2) Includes—

(A) All cash or cash equivalents;

(B) The fair market value of goods, services, or other non-cash consideration (including real, personal, tangible, and intangible property);

(C) In-kind and cash donations and other gifts (but not capital contributions made in exchange for an equity interest in the recipient); and

(D) Amounts earned by such person or entity but paid to an Affiliate of such person or entity in lieu of payment to such person or entity.

Gross revenues shall be calculated in accordance with U.S. Generally Accepted Accounting Principles (GAAP), except that a transmitting entity that computes Federal taxable income on the basis of the cash receipts and disbursements method of accounting for any taxable year may compute its gross receipts for any period included in such taxable year on the same basis.

(h) A “*Microcaster*” is an Eligible Small Webcaster that, together with its Affiliates, in any calendar year in which it is to be considered a Microcaster, meets the following additional eligibility criteria: (i) Transmits sound recordings only by means of eligible nonsubscription transmissions (as defined in 17 U.S.C. 114(j)(6)); (ii) had annual Gross Revenues plus Third Party Participation Revenues during the prior year of not more than \$5,000 and reasonably expects Gross Revenues plus Third Party Participation Revenues during the applicable year of not more than \$5,000; (iii) has Expenses during the prior year of not more than \$10,000 and reasonably expects Expenses during the applicable year of not more than \$10,000; and (iv) during the prior year did not make eligible nonsubscription transmissions exceeding 18,067 Aggregate Tuning Hours, and during the applicable year reasonably does not expect to make eligible nonsubscription transmissions exceeding 18,067 Aggregate Tuning Hours.

(i) The term “*New Subscription Service*” has the meaning given that term in 17 U.S.C. 114(j)(8).

(j) The “Third Party Participation Revenues” of a transmitting entity are revenues of any kind earned by a person or entity, other than the transmitting entity, including those:

(1) That relate to the public performance of sound recordings and are subject to an economic arrangement in which the transmitting entity receives anything of value; or

(2) That are earned by such person or entity from the sale of advertising of any kind in connection with the transmitting entity’s eligible nonsubscription transmissions.

By way of example only, a transmitting entity’s Third Party Participation Revenues would include revenues earned by the transmitting entity’s proprietor, a marketing partner of the transmitting entity, or an aggregator through which the transmitting entity’s transmissions are available, by virtue of the transmitting entity’s transmissions.

[FR Doc. E9-4439 Filed 3-2-09; 8:45 am]

BILLING CODE 1410-30-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extension of a currently approved information collection, Financial Disclosure Report, Standard Form 714, which is required as a condition of access to specifically designated classified information along with a favorably adjudicated personnel security background investigation or reinvestigation that results in the granting or updating of a security clearance. Additionally, NARA proposes to make changes to the Standard Form 714 and the instructions to the form. Specific proposed changes will be provided upon request to NARA at the addresses provided below. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before May 4, 2009 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd., College Park, MD 20740-6001; or faxed to 301-713-7409; or electronically mailed to [tamee.fechhelm@nara.gov](mailto:tamee.fechhelm@nara.gov).

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Tamee Fechhelm at telephone number 301-837-1694, or fax number 301-713-7409.

**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the general public and other Federal agencies to comment on proposed information collections. The comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA’s estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways, including the use of information technology, to minimize the burden of the collection of information on all respondents; and (e) whether small businesses are affected by this collection. The comments that are submitted will be summarized and included in the NARA request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this notice, NARA is soliciting comments concerning the following information collection:

*Title:* Financial Disclosure Report.

*OMB number:* 3095-0058.

*Agency form number:* Standard Form 714.

*Type of review:* Regular.

*Affected public:* Business or other for-profit.

*Estimated number of respondents:* 25,897.

*Estimated time per response:* 2 hours.

*Frequency of response:* On occasion.

*Estimated total annual burden hours:* 51,794 hours.

*Abstract:* Executive Order 12958, as amended, “Classified National Security Information” authorizes the Information Security Oversight Office to develop standard forms that promote the implementation of the Government’s security classification program. These forms promote consistency and uniformity in the protection of classified information.

The Financial Disclosure Report contains information that is used to assist in making eligibility determinations for access to specifically designated classified information pursuant to Executive Order 12968, “Access to Classified Information,” by appropriately trained adjudicative

personnel. The data may later be used as part of a review process to evaluate continued eligibility for access to such specifically designated classified information or as evidence in legal proceedings.

The Financial Disclosure Report helps law enforcement entities obtain pertinent information in the preliminary stages of potential espionage and counter terrorism cases.

Dated: February 26, 2009.

**Martha Morphy,**

*Assistant Archivist for Information Services.*

[FR Doc. E9-4502 Filed 3-2-09; 8:45 am]

BILLING CODE 7515-01-P

## NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** National Archives and Records Administration (NARA).

**ACTION:** Notice.

**SUMMARY:** NARA is giving public notice that the agency proposes to request extensions of two currently approved information collections. The first is a survey of Customer Satisfaction at the National Personnel Records Center (Military Personnel Records [MPR] facility) of the National Archives and Records Administration. The second is voluntary survey of museum visitors at each Presidential library. The information provides feedback about our visitors’ experiences at the libraries. The public is invited to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Written comments must be received on or before May 4, 2009 to be assured of consideration.

**ADDRESSES:** Comments should be sent to: Paperwork Reduction Act Comments (NHP), Room 4400, National Archives and Records Administration, 8601 Adelphi Rd, College Park, MD 20740-6001; faxed to 301-713-7409; or electronically mailed to [tamee.fechhelm@nara.gov](mailto:tamee.fechhelm@nara.gov).

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**SUPPLEMENTARY INFORMATION:** Pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104-13), NARA invites the