



# ANNOUNCEMENT

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

## FINAL RULE

### NONCOMMERCIAL EDUCATIONAL BROADCASTING COMPULSORY LICENSE

The following excerpt is taken from Volume 67, Number 242 of the *Federal Register* of Tuesday, December 17, 2002 (pp. 77170-77173)

#### LIBRARY OF CONGRESS

Copyright Office  
37 CFR Part 253  
[Docket No. 2002-4 CARP NCBRA]

#### Noncommercial Educational Broadcasting Compulsory License

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

**ACTION:** Final rule.

**SUMMARY:** The Copyright Office of the Library of Congress is publishing final regulations adjusting the royalty rates and terms under the Copyright Act for the noncommercial educational broadcasting compulsory license for the period 2003 through 2007.

**EFFECTIVE DATE:** January 1, 2003.

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#### SUPPLEMENTARY INFORMATION:

##### Background

Section 118 of the Copyright Act, 17 U.S.C., creates a compulsory license for the use of certain copyrighted works in connection with noncommercial broadcasting. Terms and rates for this compulsory license applicable to parties who are not subject to privately negotiated licenses are published in 37 CFR part 253 and are subject to adjustment at five-year intervals. This is a window year for such an adjustment.

After extended negotiations initiated by the Library of Congress, the parties in this

docket submitted proposals for adjustment of the rates and terms contained in part 253. Section 251.63(b) of the Copyright Arbitration Royalty Panel ("CARP") rules, 37 CFR, provides that terms and rates for a statutory license may be adopted by the Librarian of Congress in lieu of a CARP proceeding if all parties reach a settlement, and the Librarian publishes the negotiated terms and rates in the **Federal Register** for notice and comment. If no one objects to the proposed rates and terms and submits a Notice of Intent to Participate in a CARP proceeding, then the Librarian may adopt the negotiated rates and terms as final.

On October 30, 2002, the Library published a Notice of Proposed Rulemaking ("NPRM") setting forth the rates and terms negotiated by the parties in this proceeding for the period 2003-2007. 67 FR 66090 (October 30, 2002). The NPRM specified that objecting parties must submit their objections and Notices of Intent to Participate by December 2, 2002. No filings were received. Consequently, pursuant to 37 CFR 251.63(b)\* the Librarian moves to final rules.

##### Effective Date

The final section 118 royalty terms and rates are effective on January 1, 2003. January 1, 2003, is less than 30 days from publication of the notice of the final rule. Section 553 of the Administrative Procedure Act, 5 U.S.C., provides that final rules shall not be effective less than 30 days from their publication unless, *inter alia*, the agency finds good cause, a description of which must be published with the rule. 5 U.S.C. 553(d)(3). Good cause exists in this case.

The final rules are the product of negotiations between representatives of copyright owners and copyright users. All owners and users affected by these rates have already had the opportunity to participate in the process, and any additional interested parties were afforded further opportunity to participate when the Copyright Office published them

\*Corrected text. Original document incorrectly cited 37 CFR 252.63(b).

as proposed rules in the **Federal Register**. 67 FR 66090 (October 30, 2002). The copyright owners and users who negotiated the final rules have the expectation that they will become effective on January 1, 2003. Even those parties affected by the rules who did not participate in their negotiation are aware that 2002 is a window year for new rates and terms for the 2003-2007 period, beginning on January 1, 2003. *See* 67 FR at 66092.

The negotiations that produced these final rules took a considerable amount of time to orchestrate and did not result in final agreements until late this year. In addition, some of the rates are dependent upon changes in the Consumer Price Index, information which was not known until the end of November. This resulted in a delay in publishing the final rules until now. Because of these circumstances, and because no parties affected by these rules are prejudiced, good cause exists that they become effective less than 30 days from date of publication of this Notice.

##### List of Subjects in 37 CFR Part 253

Copyright, Music, Radio, Television, Rates.

##### Final Regulations

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

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

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

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

2. Section 253.1 is amended by removing the phrase "January 1, 1998 and ending on December 31, 2002" and adding "January 1, 2003 and ending on December 31, 2007" in its place.

**Sec. 253.3 [Removed and Reserved]**

- 3. Section 253.3 is removed and reserved.
  - 4. Section 253.4 is amended as follows:
    - a. In the introductory text, by removing “, or compositions in the repertoires of ASCAP, BMI, or SESAC which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in subchapter B of 37 CFR, part 251.”;
    - b. By revising paragraph (a);
    - c. in paragraph (c), by removing the phrase “January 1, 1998, to December 31, 2002” and adding “January 1, 2003, to December 31, 2007” in its place; and
    - d. in paragraph (d), by removing “three” and adding “four” in its place.
- The revisions to Sec. 253.4 read as follows:*

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

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- (a) Determination of royalty rate. (1) For performance of such work in a feature presentation of PBS:
  - 2003-2007 ..... \$224.22
- (2) For performance of such a work as background or theme music in a PBS program:
  - 2003-2007 ..... \$56.81
- (3) For performance of such a work in a feature presentation of a station of PBS:
  - 2003-2007..... \$19.16
- (4) For performance of such a work as background or theme music in a program of a station of PBS:
  - 2003-2007..... \$4.04
- (5) For the performance of such a work in a feature presentation of NPR:
  - 2003-2007..... \$22.73
- (6) For the performance of such a work as background or theme music in an NPR program:
  - 2003-2007..... \$5.51
- (7) For the performance of such a work in a feature presentation of a station of NPR:
  - 2003-2007..... \$1.61
- (8) For the performance of such a work as background or theme music in a program of a station of NPR:
  - 2003-2007..... \$57
- (9) For purposes of this schedule the rate for the performance of theme music in an entire series shall be double the single program theme rate.
- (10) In the event the work is first performed in a program of a station of PBS or NPR, and such program is subsequently distributed by PBS or NPR, an additional royalty payment shall be made equal to the difference between the rate specified in this section for a program of a station of PBS or NPR, respectively, and the rate specified in this section for a PBS or NPR program, respectively.

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**Sec. 253.5 [Amended]**

5. Section 253.5(c)(3) is amended by removing “\$66” and adding “\$80” in its place.

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6. Section 253.6(c) is revised to read as follows:

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

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(c) Royalty rate. A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

- (1) For all such compositions in the repertory of ASCAP, in 2003, \$460; in 2004, \$475; in 2005, \$495; in 2006, \$515; in 2007, \$535.
- (2) For all such compositions in the repertory of BMI, in 2003, \$460; in 2004, \$475; in 2005, \$495; in 2006, \$515; in 2007, \$535.
- (3) For all such compositions in the repertory of SESAC, in 2003, \$98; in 2004, \$100; in 2005, \$102; in 2006, \$104; in 2007, \$106.
- (4) For the performance of any other such compositions, in 2003 through 2007, \$1.

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7. Section 253.7 is amended as follows:

- a. In paragraph (a), by removing “or compositions represented by the Harry Fox Agency, Inc., SESAC, and/or the National Music Publishers Association and which are licensed on terms and conditions established by a duly empowered Copyright Arbitration Royalty Panel pursuant to the procedures set forth in this subchapter.”; and
- b. By revising paragraph (b).  
The revisions to Sec. 253.7 read as follows:

**Sec. 253.7 Recording rights, rates and terms.**

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(b) Royalty rate. (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

	2003-2007
Feature .....	\$112.40
Concert feature (per minute) .....	33.75
Background.....	56.81
Theme:	
Single program or first series program .....	56.81
Other series program.....	23.06

(ii) For such uses other than in a PBS-distributed television program, the royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

	2003-2007
Feature.....	\$9.29
Concert feature (per minute) .....	2.44
Background .....	4.04
Theme:	
Single program or first series program .....	4.04
Other series program .....	1.61

(iii) In the event the work is first recorded other than in a PBS-distributed program, and such program is subsequently distributed by PBS, an additional royalty payment shall be made equal to the difference between the rate specified in this section for other than a PBS-distributed program and the rate specified in this section for a PBS-distributed program.

(2) For uses licensed herein of a musical work in a NPR program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in any NPR program distributed by NPR. For purposes of this schedule “National Public Radio” programs include all programs produced in whole or in part by NPR, or by any NPR station or organization under contract with NPR.

	2003-2007
Feature .....	\$12.17
Concert feature (per minute) .....	17.86
Background .....	6.10
Theme:	
Single program or first series program .....	6.10
Other series program.....	2.43

(3) For purposes of this schedule, a “Concert Feature” shall be deemed to be the nondramatic presentation in a program of all or part of a symphony, concerto, or other serious work originally written for concert performance or the nondramatic presentation in a program of portions of a serious work originally written for opera performance.

(4) For such uses other than in an NPR-produced radio program:

	2003-2007
Feature .....	\$78
Feature (concert)(per half hour) .....	1.63
Background.....	.39

(5) The schedule of fees covers use for a period of three years following the first use. Succeeding use periods will require the following additional payment: additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year fee thereafter—25 percent of the

initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the royalty rates established in this schedule.

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8. Section 253.8 is amended by revising paragraphs (b)(1) and (f)(1) to read as follows (the undesignated paragraph following (b)(1) is unchanged):

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

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(b) \*\*\*

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

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

	2003-2007
(A) For featured display of a work .....	\$68.67
(B) For background and montage display .....	33.49
(C) For use of a work for program identification or for thematic use .....	135.37
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of the schedule.....	44.47

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

	2003-2007
(A) For featured display of a work .....	\$44.47
(B) For background and montage display .....	22.80
(C) For use of a work for a program identification or for thematic use.....	90.91
(D) For the display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced irrespective of whether the reproduced work of fine art is copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.....	22.80

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(f) \*\*\*

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(1) The rates of this schedule are for unlimited use for a period of three years from the date of the first use of the work under this schedule. Succeeding use periods will require the following additional payment: Additional one-year period—25 percent of the initial three-year fee; second three-year period—50 percent of the initial three-year fee; each three-year period thereafter—25 percent of the initial three-year fee; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover use during all subsequent use periods without limitation. Such succeeding uses which are subsequent to December 31, 2007, shall be subject to the rates established in this schedule.

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9. In Sec. 253.10, the first sentence in paragraph (a) is revised to read:

**Sec. 253.10 Cost of living adjustment.**

(a) On December 1, 2003, the Librarian of Congress shall publish in the **Federal Register** a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2002, to the most recent Index published prior to December 1, 2003. \* \* \*

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Dated: December 3, 2002.

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

**James H. Billington,**  
*The Librarian of Congress.*

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