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.


FOR FURTHER INFORMATION CONTACT:
David O. Carson, General Counsel, or
William J. Roberts, Jr., Senior Attorney,
Copyright Arbitration Royalty Panel (CARP),
P.O. Box 70977, Southwest Station, Washing-
ton, DC 20024. Telephone (202) 707-8380.
Telefax: (202) 252-3423

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 Arbitra-
tion 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 pub-
lished 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 No-
tices 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 un-
less, 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 ex-
ists in this case.

The final rules are the product of negotia-
tions 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
as proposed rules in the Federal Register.
67 FR 66090 (October 30, 2002). The copy-
right 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

The negotiations that produced these final
rules took a considerable amount of time to
orchestrate and did not result in final agree-
ments 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 be
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 COPY-
RIGHTED WORKS IN CONNECTION WITH
NONCOMMERCIAL EDUCATIONAL BROAD-
CASTING

1. The authority citation for part 253 con-
tinues 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.

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


(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 ........................................ $5.75
(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.

Sec. 253.5 [Amended]

5. Section 253.5(c)(3) is amended by removing “six” and adding “eight” in its place.

(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 ................................................. $1.61
Other series program ................... $2.43

(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 “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 ................................................. $1.61
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 ........................................ $7.78
Concert feature (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.

* * * * *

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.

* * * * *

(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:

<table>
<thead>
<tr>
<th>2003-2007</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) For featured display of a work</td>
<td>$68.67</td>
</tr>
<tr>
<td>(B) For background and montage display</td>
<td>$33.49</td>
</tr>
<tr>
<td>(C) For use of a work for program identification or for thematic use</td>
<td>$135.37</td>
</tr>
<tr>
<td>(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</td>
<td>$44.47</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>2003-2007</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>(A) For featured display of a work</td>
<td>$44.47</td>
</tr>
<tr>
<td>(B) For background and montage display</td>
<td>$22.80</td>
</tr>
<tr>
<td>(C) For use of a work for program identification or for thematic use</td>
<td>$90.91</td>
</tr>
<tr>
<td>(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</td>
<td>$22.80</td>
</tr>
</tbody>
</table>

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(f) * * *

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