

**Before the  
COPYRIGHT ROYALTY JUDGES  
Library of Congress  
Washington, DC**

*In re*

**DETERMINATION OF ROYALTY RATES  
AND TERMS FOR PERFORMANCE OR  
DISPLAY OF NONDRAMATIC MUSICAL  
WORKS AND PICTORIAL, GRAPHIC, AND  
SCULPTURAL WORKS BY PUBLIC  
BROADCASTING ENTITIES (PB III)**

**Docket No. 16-CRB-0002-PBR (2018-2022)**

**JOINT PROPOSAL OF THE AMERICAN SOCIETY OF COMPOSERS, AUTHORS  
AND PUBLISHERS AND NATIONAL ASSOCIATION OF COLLEGE AND  
UNIVERSITY BUSINESS OFFICERS**

The American Society of Composers, Authors and Publishers (“ASCAP”) and the National Association of College and University Business Officers (“NACUBO”) hereby submit this joint proposal for statutory license fees to be paid to ASCAP by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc. (“NPR”) for the performance of copyrighted musical works in ASCAP’s repertory. ASCAP and NACUBO also jointly propose a revised version of 37 C.F.R. § 381.5 which applies to the performance of copyrighted, published nondramatic musical compositions by noncommercial radio stations that are licensed to colleges or universities. This proposal covers the years 2018 through 2022.

ASCAP licenses, on a non-exclusive basis, the non-dramatic public performing right in a repertory of millions of musical works on behalf of its nearly 600,000 songwriter, composers and

music publishers, including thousands of foreign works through ASCAP's reciprocal licensing agreements with over 90 foreign performing right organizations.

Founded in 1962, NACUBO is a membership organization that represents more than 2,100 colleges and universities in the United States, with a mission to advance the economic viability, business practices and support for higher education institutions in fulfillment of their missions. To obtain further input and guidance during negotiations that led to this joint proposal, NACUBO consulted with the American Council on Education ("ACE"), the nation's most visible and influential higher education organization, representing more than 1,700 colleges and universities. Many of the college and university members of NACUBO operate noncommercial radio stations that are not affiliated with NPR, and these members rely on the Section 118 license in connection with the musical compositions included in their radio broadcasts.

#### BACKGROUND

Shortly after the Copyright Revision Act of 1976 became effective (on January 1, 1978), the Copyright Royalty Tribunal ("CRT") held proceedings for the determination of compulsory license fees to be paid by public broadcasting entities for the performance of copyrighted musical works, pursuant to 17 U.S.C. § 118. Among those public broadcasting entities were noncommercial educational radio stations licensed to colleges or universities that were not members of NPR. *See generally*, 43 Fed. Reg. 25,069 (June 8, 1978). In 1978, the CRT fixed the annual fee to be paid to ASCAP by college radio stations which are not affiliated with NPR ("College Radio Stations") for their performances of copyrighted musical works in ASCAP's repertory. *See* 43 Fed. Reg. 25,071, 25,073; 37 C.F.R. §§ 304.5, 304.10 (1978). That CRT determination was effective through December 31, 1982.

In accordance with the 5-year adjustment provision in the statute, in 1982, 1987, 1992, 1997 and 2002, ASCAP and ACE made joint proposals to the CRT and its successor, the Librarian of Congress, to adjust the ASCAP blanket license fees for College and University Radio Stations. These proposals were adopted by the CRT and the Librarian of Congress (the “Librarian”).<sup>1</sup>

On January 9, 2006, the Copyright Royalty Judges (“Judges”), designated by Congress as the successors to the CRT and Librarian of Congress to handle Section 118 royalties, published a notice to set rates for the five-year term from January 1, 2008 through December 31, 2012. *See* 71 Fed. Reg. 1453-1454 (January 9, 2006). ASCAP and ACE, with input and approval from NACUBO, submitted a joint proposal to the Judges to continue the royalty fee previously set with annual cost-of-living adjustments in accordance with the Consumer Price Index for the years 2008 through 2012. Additionally, ASCAP and ACE also proposed that 37 C.F.R. § 253.5 be revised to clarify the scope of the regulation. This proposal was adopted by the Judges on November 30, 2007 (72 Fed. Reg. 67646).

In 2011, ASCAP and ACE, with input and approval from NACUBO, submitted a joint proposal to the Judges, creating a tiered system. The tiered fees are based on the number of full-time students enrolled, with the exception that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power (“ERP”) of 100 Watts or less, as specified on

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<sup>1</sup>On December 17, 1993, Congress abolished the CRT. Copyright Royalty Tribunal Reform Act of 1993 (“CRT Reform Act”), Pub. L. No. 103-198, 107 Stat. 2304. Pursuant to the CRT Reform Act, Congress directed the Copyright Office (the “Office”) and the Librarian to adopt the rules and regulations of the CRT found in chapter 3 of 37 C.F.R.; the Office subsequently reissued the CRT regulations on December 22, 1993. 17 U.S.C. § 802(d); 58 Fed. Reg. 67690 (December 22, 1993). The Office also renumbered former 37 C.F.R. § 304.5 (which established terms and rates of license agreements for College Radio Stations) as 37 C.F.R. § 253.5, and renumbered 37 C.F.R. § 304.10 (which calls for annual cost-of-living adjustments to certain rates paid by College Radio Stations) as 37 C.F.R. § 253.10. *See* 59 Fed. Reg. 23964 (May 9, 1994).

its current FCC license, regardless of the size of the student population. The Judges adopted this proposal on November 29, 2012 (77 Fed. Reg. 71105).

On January 5, 2016, the Judges published a notice in the above-captioned proceeding to set rates for the five-year term from January 1, 2018 through December 31, 2022. *See* 81 Fed. Reg. 256.

#### THE ASCAP-NACUBO JOINT PROPOSAL

ASCAP and NACUBO hereby propose ASCAP blanket license fees for the covered stations for the five-year period 2018 through 2022, continuing the tiered approach in 37 C.F.R. § 381.5(c)(2)(i). A chart of the proposed rates embodying the ASCAP-NACUBO joint proposal is attached hereto as Appendix A. ACE supports the proposal as well. No revisions to the text of the governing regulation, *i.e.*, 37 C.F.R. § 381.5, are proposed<sup>2</sup>; a copy of the proposed governing regulation is attached as Appendix B.<sup>3</sup>

ASCAP and NACUBO propose these fees as the ASCAP license fee for all College Radio Stations, which the Judges may adopt and incorporate within 37 C.F.R. § 381.5. Such adoption in the regulations would make further proceedings, including hearings, unnecessary for these stations insofar as their performance of ASCAP music is concerned.<sup>4</sup>

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<sup>2</sup> For example, ASCAP and NACUBO propose that 37 C.F.R. § 381.5(c)(1)(ii) remain unchanged, thus providing that the lowest tier fee applicable to any College Radio Stations with fewer than 1,000 full-time enrolled students is also available to any College Radio Station with an authorized effective radiated power of 100 Watts or less, regardless of the size of the student population.

<sup>3</sup> The rates in 37 C.F.R. § 381.5(c)(2) and (3) for public performances of musical compositions in Broadcast Music, Inc.'s and SESAC, Inc.'s repertory will be addressed in separate joint proposals submitted by the NACUBO and each of those entities.

<sup>4</sup> ASCAP and NACUBO submit a joint proposal, rather than entering into a voluntary agreement, because NACUBO does not have the power to bind all College Radio Stations to an agreement.

The Judges have statutory authority to make revisions to terms as well as rates pursuant to 17 U.S.C. § 801(b)(1). ASCAP and NACUBO have no objection to the proposed changes to 37 C.F.R. § 381.5 being printed and made available to the public in the form of a Federal Register notice.

CONCLUSION

ASCAP and NACUBO request that the Judges adopt this joint proposal for a modification of fees to be paid by College Radio Stations pursuant to Section 118 of the Copyright Act. ASCAP and NACUBO request that 37 C.F.R. § 381.5 be amended with the new rates.

Respectfully submitted,

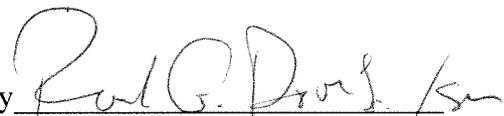
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Dated: July 12, 2016

**APPENDIX A**

	Number of full-time students	2018	2019	2020	2021	2022
Level 1	<1,000	\$352	\$359	\$366	\$373	\$380
Level 2	1,000-4,999	407	415	423	431	440
Level 3	5,000-9,999	557	568	579	591	603
Level 4	10,000-19,999	722	736	751	766	781
Level 5	20,000 +	908	926	945	964	983

APPENDIX B

**§381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.**

(a) *Scope.* This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) *Voluntary license agreements.* Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(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, the royalty rates shall be as follows:

(i)

	<b>Number of full-time students</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>
Level 1	<1,000	\$352	\$359	\$366	\$373	\$380
Level 2	1,000-4,999	407	415	423	431	440
Level 3	5,000-9,999	557	568	579	591	603
Level 4	10,000-19,999	722	736	751	766	781
Level 5	20,000 +	908	926	945	964	983

(ii) Level 1 rates as set forth in paragraph (c)(1)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a), of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

\* \* \*

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

\* \* \*

(4) For the performance of any other such compositions: \$1.

(d) *Payment of royalty rate.* The public broadcasting entity shall pay the required royalty rate to ASCAP \* \* \* not later than January 31 of each year. Each annual payment to ASCAP \* \* \* shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to \* \* \* ASCAP \* \* \* .

(e) *Records of use.* A public broadcasting entity subject to this section shall furnish to ASCAP \* \* \* upon request, a music-use report during one week of each calendar year. ASCAP \* \* \* shall not in any one calendar year request more than 10 stations to furnish such reports.

## CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of July, 2016, a copy of the foregoing Joint Proposal of the American Society of Composers, Authors and Publishers and National Association of College and University Business Officers was sent by overnight delivery, or by electronic mail delivery to those that have consented to such means of delivery, to the following:

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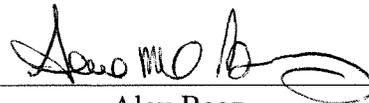
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