

**§ 254.3 Compulsory license fees for coin-operated phonorecord players.**

(a) Commencing January 1, 1982, the annual compulsory license fee for a coin-operated phonorecord player shall be \$25.

(b) Commencing January 1, 1984, the annual compulsory license fee for a coin-operated phonorecord player shall be \$50.

(c) Commencing January 1, 1987, the annual compulsory license fee for a coin-operated phonorecord player shall be \$63.

(d) If performances are made available on a particular coin-operated phonorecord player for the first time after July 1 of any year, the compulsory license fee for the remainder of that year shall be one half of the annual rate of (a), (b), or (c) of this section, whichever is applicable.

(e) Commencing January 1, 1990, the annual compulsory license fee for a coin-operated phonorecord player is suspended through December 31, 1999, or until such earlier or later time as the March 1990 license agreement between AMOA and ASCAP/BMI/SESAC is terminated.

[51 FR 27537, Aug. 1, 1986, as amended at 55 FR 28197, July 10, 1990. Redesignated at 59 FR 23993, May 9, 1994]

**PART 255—ADJUSTMENT OF ROYALTY PAYABLE UNDER COMPULSORY LICENSE FOR MAKING AND DISTRIBUTING PHONORECORDS**

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AUTHORITY: 17 U.S.C. 801(b)(1) and 803.

**§ 255.1 General.**

This part 255 adjusts the rates of royalties payable under the compulsory li-

cense for making and distributing phonorecords, including digital phonorecord deliveries, embodying nondramatic musical works, under 17 U.S.C. 115.

[60 FR 61657, Dec. 1, 1995]

**§ 255.2 Royalty payable under compulsory license.**

With respect to each work embodied in the phonorecord, the royalty payable shall be either four cents, or three-quarters of one cent per minute of playing time or fraction thereof, whichever amount is larger, for every phonorecord made and distributed on or after July 1, 1981, subject to adjustment pursuant to § 255.3.

[46 FR 891, Jan. 5, 1981, as amended at 46 FR 62268, Dec. 23, 1981. Redesignated and amended at 59 FR 23993, May 9, 1994]

**§ 255.3 Adjustment of royalty rate.**

(a) For every phonorecord made and distributed on or after January 1, 1983, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.25 cents, or 0.8 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (b) through (m) of this section.

(b) For every phonorecord made and distributed on or after July 1, 1984, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 4.5 cents, or 0.85 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (c) through (m) of this section.

(c) For every phonorecord made and distributed on or after January 1, 1986, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.0 cents, or 0.95 cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (d) through (m) of this section.

(d) For every phonorecord made and distributed on or after January 1, 1988, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.25 cents, or 1.0

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cent per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (e) through (m) of this section.

(e) For every phonorecord made and distributed on or after January 1, 1990, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 5.7 cents, or 1.1 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (f) through (m) of this section.

(f) For every phonorecord made and distributed on or after January 1, 1992, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.25 cents, or 1.2 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (g) through (m) of this section.

(g) For every phonorecord made and distributed on or after January 1, 1994, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.6 cents, or 1.25 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (h) through (m) of this section.

(h) For every phonorecord made and distributed on or after January 1, 1996, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (i) through (m) of this section.

(i) For every phonorecord made and distributed on or after January 1, 1998, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.1 cents, or 1.35 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (j) through (m) of this section.

(j) For every phonorecord made and distributed on or after January 1, 2000, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

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record shall be either 7.55 cents, or 1.45 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (k) through (m) of this section.

(k) For every phonorecord made and distributed on or after January 1, 2002, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.0 cents, or 1.55 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraphs (l) through (m) of this section.

(l) For every phonorecord made and distributed on or after January 1, 2004, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 8.5 cents, or 1.65 cents per minute of playing time or fraction thereof, whichever amount is larger, subject to further adjustment pursuant to paragraph (m) of this section.

(m) For every phonorecord made and distributed on or after January 1, 2006, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 9.1 cents, or 1.75 cents per minute of playing time or fraction thereof, whichever amount is larger.

[60 FR 55459, Nov. 1, 1995, as amended at 63 FR 7289, Feb. 13, 1998]

#### § 255.4 Definition of digital phonorecord delivery.

A “*digital phonorecord delivery*” is each individual delivery of a phonorecord by digital transmission of a sound recording which results in a specifically identifiable reproduction by or for any transmission recipient of a phonorecord of that sound recording, regardless of whether the digital transmission is also a public performance of the sound recording or any nondramatic musical work embodied therein. The reproduction of the phonorecord must be sufficiently permanent or stable to permit it to be perceived, reproduced, or otherwise communicated for a period of more than transitory duration. Such a phonorecord may be permanent or it may be made available to the transmission recipient for a limited period of time or for a specified

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number of performances. A digital phonorecord delivery includes all phonorecords that are made for the purpose of making the digital phonorecord delivery.

[73 FR 66182, Nov. 7, 2008]

### § 255.5 Royalty rate for digital phonorecord deliveries in general.

(a) For every digital phonorecord delivery made on or before December 31, 1997, the royalty rate payable with respect to each work embodied in the phonorecord shall be either 6.95 cents, or 1.3 cents per minute of playing time or fraction thereof, whichever amount is larger.

(b) For every digital phonorecord delivery made on or after January 1, 1998, except for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes the digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), the royalty rate payable with respect to each work embodied in the phonorecord shall be the royalty rate prescribed in § 255.3 for the making and distribution of a phonorecord made and distributed on the date of the digital phonorecord delivery (the "Physical Rate"). In any future proceeding under 17 U.S.C. 115(c)(3)(C) or (D), the royalty rates payable for a compulsory license for digital phonorecord deliveries in general shall be established de novo, and no precedential effect shall be given to the royalty rate payable under this paragraph for any period prior to the period as to which the royalty rates are to be established in such future proceeding.

[64 FR 6223, Feb. 9, 1999]

### § 255.6 Royalty rate for incidental digital phonorecord deliveries.

The royalty rate for digital phonorecord deliveries where the reproduction or distribution of a phonorecord is incidental to the transmission which constitutes a digital phonorecord delivery, as specified in 17 U.S.C. 115(c)(3)(C) and (D), is deferred for consideration until the next digital phonorecord delivery rate adjustment proceeding pursuant to the schedule set forth in § 255.7; provided, however, that any

owner or user of a copyrighted work with a significant interest in such royalty rate, as provided in 17 U.S.C. 803(a)(1), may petition the Librarian of Congress to establish a rate prior to the commencement of the next digital phonorecord delivery rate adjustment proceeding. In the event such a petition is filed, the Librarian of Congress shall proceed in accordance with 17 U.S.C. 115(c)(3)(D), and all applicable regulations, as though the petition had been filed in accordance with 17 U.S.C. 803(a)(1).

[64 FR 6223, Feb. 9, 1999]

### § 255.7 Future proceedings.

The procedures specified in 17 U.S.C. 115(c)(3)(C) shall be repeated in 1999, 2001, 2003, and 2006 so as to determine the applicable rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. The procedures specified in 17 U.S.C. 115(c)(3)(D) shall be repeated, in the absence of license agreements negotiated under 17 U.S.C. 115(c)(3)(B) and (C), upon the filing of a petition in accordance with 17 U.S.C. 803(a)(1), in 2000, 2002, 2004, and 2007 so as to determine new rates and terms for the making of digital phonorecord deliveries during the periods beginning January 1, 2001, 2003, 2005, and 2008. Thereafter, the procedures specified in 17 U.S.C. 115(c)(3)(C) and (D) shall be repeated in each fifth calendar year. Notwithstanding the foregoing, different years for the repeating of such proceedings may be determined in accordance with 17 U.S.C. 115(c)(3)(C) and (D).

[64 FR 6223, Feb. 9, 1999]

### § 255.8 Public performances of sound recordings and musical works.

Nothing in this part annuls or limits the exclusive right to publicly perform a sound recording or the musical work embodied therein, including by means of a digital transmission, under 17 U.S.C. 106(4) and 106(6).

[64 FR 6223, Feb. 9, 1999]

**PART 256—ADJUSTMENT OF ROYALTY FEE FOR CABLE COMPULSORY LICENSE**

Sec.

256.1 General.

256.2 Royalty fee for compulsory license for secondary transmission by cable systems.

AUTHORITY: 17 U.S.C. 702, 802.

**§ 256.1 General.**

This part establishes adjusted terms and rates for royalty payments in accordance with the provisions of 17 U.S.C. 111 and 801(b)(2)(A), (B), (C), and (D). Upon compliance with 17 U.S.C. 111 and the terms and rates of this part, a cable system entity may engage in the activities set forth in 17 U.S.C. 111.

[47 FR 52159, Nov. 19, 1982. Redesignated at 59 FR 23993, May 9, 1994, and amended at 60 FR 8198, Feb. 13, 1995]

**§ 256.2 Royalty fee for compulsory license for secondary transmission by cable systems.**

(a) Commencing with the second semiannual accounting period of 2005 and for each semiannual accounting period thereafter, the royalty rates established by 17 U.S.C. 111(d)(1)(B) shall be as follows:

(1) 1.013 of 1 per centum of such gross receipts for the privilege of further transmitting any nonnetwork programming of a primary transmitter in whole or in part beyond the local service area of such primary transmitter, such amount to be applied against the fees, if any, payable pursuant to paragraphs (a) (2) through (4) and (c);

(2) 1.013 of 1 per centum of such gross receipts for the first distant signal equivalent;

(3) .668 of 1 per centum of such gross receipts for each of the second, third and fourth distant signal equivalents; and

(4) .314 of 1 per centum of such gross receipts for the fifth distant signal equivalent and each additional distant signal equivalent thereafter.

(b) Commencing with the second semiannual accounting period of 2005 and for each semiannual accounting period thereafter, the gross receipts limitations established by 17 U.S.C.

111(d)(1) (C) and (D) shall be adjusted as follows:

(1) If the actual gross receipts paid by subscribers to a cable system for the period covered by the statement for the basic service of providing secondary transmission of primary broadcast transmitters total \$263,800 or less, gross receipts of the cable system for the purpose of this paragraph shall be computed by subtracting from such actual gross receipts the amount by which \$263,800 exceeds such actual gross receipts, except that in no case shall a cable system's gross receipts be reduced to less than \$10,400. The royalty fee payable under this paragraph shall be 0.5 of 1 per centum regardless of the number of distant signal equivalents, if any; and

(2) If the actual gross receipts paid by the subscribers to a cable system for the period covered by the statement, for the basic service of providing secondary transmissions of primary broadcast transmitters, are more than \$263,800 but less than \$527,600, the royalty fee payable under this paragraph shall be:

(i) 0.5 of 1 per centum of any gross receipts up to \$189,800 and

(ii) 1 per centum of any gross receipts in excess of \$189,800 but less than \$379,600, regardless of the number of distant signal equivalents, if any.

(c) Notwithstanding paragraphs (a) and (d) of this section, commencing with the first accounting period of 1983 and for each semiannual accounting period thereafter, for each distant signal equivalent or fraction thereof not represented by the carriage of:

(1) Any signal which was permitted (or, in the case of cable systems commencing operations after June 24, 1981, which would have been permitted) under the rules and regulations of the Federal Communications Commission in effect on June 24, 1981, or

(2) A signal of the same type (that is, independent, network, or non-commercial educational) substituted for such permitted signal, or

(3) A signal which was carried pursuant to an individual waiver of the rules and regulations of the Federal Communications Commission, as such rules were in effect on June 24, 1981;