

§ 380.3

37 CFR Ch. III (7–1–14 Edition)

Qualified Auditor is a Certified Public Accountant.

Side Channel is a channel on the Web site of a Broadcaster which channel transmits eligible transmissions that are not simultaneously transmitted over the air by the Broadcaster.

§ 380.3 Royalty fees for the public performance of sound recordings and for ephemeral recordings.

(a) *Royalty rates.* Royalty rates and fees for eligible digital transmissions of sound recordings made pursuant to 17 U.S.C. 114, and the making of ephemeral recordings pursuant to 17 U.S.C. 112(e) are as follows:

(1) *Commercial Webcasters.* For all digital audio transmissions, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Commercial Webcaster will pay a royalty of: \$0.0019 per performance for 2011; \$0.0021 per performance for 2012; \$0.0021 per performance for 2013; \$0.0023 per performance for 2014; and \$0.0023 per performance for 2015.

(2) *Noncommercial Webcasters.* (i) For all digital audio transmissions totaling not more than 159,140 Aggregate Tuning Hours (ATH) in a month, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Noncommercial Webcaster will pay an annual per channel or per station performance royalty of \$500 in 2011, 2012, 2013, 2014, and 2015.

(ii) For all digital audio transmissions totaling in excess of 159,140 Aggregate Tuning Hours (ATH) in a month, including simultaneous digital audio retransmissions of over-the-air AM or FM radio broadcasts, and related Ephemeral Recordings, a Noncommercial Webcaster will pay a royalty of: \$0.0019 per performance for 2011; \$0.0021 per performance for 2012; \$0.0021 per performance for 2013; \$0.0023 per performance for 2014; and \$0.0023 per performance for 2015.

(b) *Minimum fee*—(1) *Commercial Webcasters.* Each Commercial Webcaster will pay an annual, non-refundable minimum fee of \$500 for each calendar year or part of a calendar year of the period 2011–2015 dur-

ing which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Commercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Commercial Webcasters, provided that a Commercial Webcaster shall not be required to pay more than \$50,000 per calendar year in minimum fees in the aggregate (for 100 or more channels or stations). For each such Commercial Webcaster, the annual minimum fee described in this paragraph (b)(1) shall constitute the minimum fees due under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B). Upon payment of the minimum fee, the Commercial Webcaster will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

(2) *Noncommercial Webcasters.* Each Noncommercial Webcaster will pay an annual, nonrefundable minimum fee of \$500 for each calendar year or part of a calendar year of the period 2011–2015 during which it is a Licensee pursuant to 17 U.S.C. 112(e) or 114. This annual minimum fee is payable for each individual channel and each individual station maintained by Noncommercial Webcasters, and is also payable for each individual Side Channel maintained by Broadcasters who are Noncommercial Webcasters. For each such Noncommercial Webcaster, the annual minimum fee described in this paragraph (b)(2) shall constitute the minimum fees due under both 17 U.S.C. 112(e)(4) and 114(f)(2)(B). Upon payment of the minimum fee, the Noncommercial Webcaster will receive a credit in the amount of the minimum fee against any additional royalty fees payable in the same calendar year.

(c) *Ephemeral recordings.* The royalty payable under 17 U.S.C. 112(e) for the making of all Ephemeral Recordings used by the Licensee solely to facilitate transmissions for which it pays royalties shall be included within, and constitute 5% of, the total royalties payable under 17 U.S.C. 112(e) and 114.