

## § 385.25

respond to any request of such copyright owner or agent. If the service provider does not provide required information within the required time, and upon receipt of written notice citing such failure does not provide such information within a further 10 business days, the uses will be considered not to be subject to the free trial royalty rate and the service provider (but not the record company) will be liable for any payment due for such uses; provided, however, that all rights and remedies of the copyright owner with respect to unauthorized uses shall be preserved.

(d) *Interpretation.* The free trial royalty rate is exclusively for audio-only licensed subpart C activity, as defined in § 385.21, involving musical works subject to licensing under 17 U.S.C. 115. The free trial royalty rate does not apply to any other use under 17 U.S.C. 115; nor does it apply to public performances, audiovisual works, lyrics or other uses outside the scope of 17 U.S.C. 115. Without limitation, uses subject to licensing under 17 U.S.C. 115 that do not qualify for the free trial royalty rate (including without limitation licensed subpart C activity, as defined in § 385.21, beyond the time limitations applicable to the free trial royalty rate) require payment of applicable royalties. This section is based on an understanding of industry practices and market conditions at the time of its development, among other things. The terms of this section shall be subject to de novo review and consideration (or elimination altogether) in future proceedings before the Copyright Royalty Judges. Nothing in this section shall be interpreted or construed in such a manner as to nullify or diminish any limitation, requirement or obligation of 17 U.S.C. 115 or other protection for musical works afforded by the Copyright Act, 17 U.S.C. 101, *et seq.*

## § 385.25 Reproduction and distribution rights covered.

A compulsory license under 17 U.S.C. 115 extends to all reproduction and distribution rights that may be necessary for the provision of the licensed subpart C activity, as defined in § 385.21, solely for the purpose of providing such licensed subpart C activity, as defined in § 385.21 (and no other purpose).

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### § 385.26 Effect of rates.

In any future proceedings under 17 U.S.C. 115(c)(3)(C) and (D), the royalty rates payable for a compulsory license shall be established de novo.

## PART 386—ADJUSTMENT OF ROYALTY FEES FOR SECONDARY TRANSMISSIONS BY SATELLITE CARRIERS

Sec.

386.1 General.

386.2 Royalty fee for secondary transmission by satellite carriers.

AUTHORITY: 17 U.S.C. 119(c), 801(b)(1).

SOURCE: 75 FR 53198, Aug. 31, 2010, unless otherwise noted.

### § 386.1 General.

This part 386 adjusts the rates of royalties payable under the statutory license for the secondary transmission of broadcast stations under 17 U.S.C. 119.

### § 386.2 Royalty fee for secondary transmission by satellite carriers.

(a) *General.* (1) For purposes of this section, *Per subscriber per month* shall mean for each subscriber subscribing to the station in question (or to a package including such station) on the last day of a given month.

(2) In the case of a station engaged in digital multicasting, the rates set forth in paragraph (b) of this section shall apply to each digital stream that a satellite carrier or distributor retransmits pursuant to 17 U.S.C. 119, provided however that no additional royalty shall be paid for the carriage of any material related to the programming on such stream.

(b) *Rates*—(1) *Private home viewing.* The rates applicable to Satellite Carriers' carriage of each broadcast signal for private home viewing shall be as follows:

(i) 2010: 25 cents per subscriber per month (for each month of 2010);

(ii) 2011: 25 cents per subscriber per month;

(iii) 2012: 26 cents per subscriber per month;

(iv) 2013: 27 cents per subscriber per month;

(v) 2014: 27 cents per subscriber per month.