

PART 252 FILING OF CLAIMS TO CABLE ROYALTY FEES

Authority: 17 U.S.C. 111(d)(4), 801, 803.

37 CFR 252.1 Scope.

This part prescribes procedures under 17 U.S.C. 111(d)(4)(A), whereby parties claiming to be entitled to cable compulsory license royalty fees shall file claims with the Copyright Office.

37 CFR 252.2 Time of filing.

During the month of July each year, any party claiming to be entitled to cable compulsory license royalty fees for secondary transmissions of one or more of its works during the preceding calendar year shall file a claim to such fees with the Copyright Office. No royalty fees shall be distributed to a party for secondary transmissions during the specified period unless such party has timely filed a claim to such fees. Claimants may file claims jointly or as a single claim.

37 CFR 252.3 Content of claims.

(a) Claims filed by parties claiming to be entitled to cable compulsory license royalty fees shall include the following information:

- (1) The full legal name of the person or entity claiming royalty fees.
- (2) The telephone number, facsimile number, if any, and full address, including a specific number and street name or rural route, of the place of business of the person or entity.
- (3) If the claim is a joint claim, a concise statement of the authorization for the filing of the joint claim, and the name of each claimant to the joint claim. For this purpose, a performing rights society shall not be required to obtain from its members or affiliates separate authorizations, apart from their standard membership affiliate agreements, or to list the name of each of its members or affiliates in the joint claim.
- (4) For individual claims, a general statement of the nature of the claimant's copyrighted works and identification of at least one secondary transmission by a cable system of such works establishing a basis for the claim. For joint claims, a general statement of the nature of the joint claimants' copyrighted works and identification of at least one secondary transmission of one of the joint claimants' copyrighted works by a cable system establishing a basis for the joint claim.

(b) Claims shall bear the original signature of the claimant or of a duly authorized representative of the claimant.

(c) In the event that the legal name and/or address of the claimant changes after the filing of the claim, the claimant shall notify the Copyright Office of such change. If the good faith efforts of the Copyright Office to contact the claimant are frustrated because of failure to notify the Office of a name and/or address change, the claim may be subject to dismissal.

37 CFR 252.4 Compliance with statutory dates.

(a) Claims filed with the Copyright Office shall be considered timely filed only if:

- (1) They are hand delivered, either by the claimant, the claimant's agent, or a private delivery carrier, to: Office of the Register of Copyrights, Room 403, James Madison Memorial Building, 101 Independence Avenue, SE., Washington, DC 20540, during normal business hours during the month of July; or
- (2) They are addressed to: Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024, and are deposited with sufficient postage with the United States Postal Service and bear a July U.S. postmark.

(b) Notwithstanding subsection (a), in any year in which July 31 falls on a Saturday, Sunday, holiday, or other nonbusiness day within the District of Columbia or the Federal Government, claims

Copyright Laws and Regulations

received by the Copyright Office by the first business day in August, or properly addressed and deposited with sufficient postage with the United States Postal Service and postmarked by the first business day in August, shall be considered timely filed.

(c) Claims dated only with a business meter that are received after July 31, will not be accepted as having been timely filed.

(d) No claim may be filed by facsimile transmission.

(e) In the event that a properly addressed and mailed claim is not timely received by the Copyright Office, a claimant may nonetheless prove that the claim was properly mailed if it was sent by certified mail return receipt requested, and the claimant can provide the receipt showing that it was properly mailed or timely received. No affidavit of an officer or employee of the claimant, or of a U.S. postal worker will be accepted as proof in lieu of the receipt.

37 CFR 252.5 Copies of claims.

A claimant shall, for each claim submitted to the Copyright Office, file an original and two copies of the claim to cable royalty fees.

**PART 253—USE OF CERTAIN COPYRIGHTED WORKS IN
CONNECTION WITH NONCOMMERCIAL EDUCATIONAL
BROADCASTING**

Authority: 17 U.S.C. 118, 801(b)(1) and 803.

Source: 57 FR 60954, Dec. 22, 1992, unless otherwise noted.

37 CFR 253.1 General.

This part 304 establishes terms and rates of royalty payments for certain activities using published nondramatic musical works and published pictorial, graphic and sculptural works during a period beginning on January 1, 1993 and ending on December 31, 1997. Upon compliance with 17 U.S.C. 118, and the terms and rates of this part, a public broadcasting entity may engage in the activities with respect to such works set forth in 17 U.S.C. 118(d).

37 CFR 253.2 Definition of public broadcasting entity.

As used in this part, the term public broadcasting entity means a noncommercial educational broadcast station as defined in section 397 of title 47 and any nonprofit institution or organization engaged in the activities described in 17 U.S.C. 118(d)(2).

37 CFR 253.3 [Reserved]

37 CFR 253.4 Performance of musical compositions by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d).

The following schedule of rates and terms shall apply to the performance by PBS, NPR and other public broadcasting entities engaged in the activities set forth in 17 U.S.C. 118(d) of copyrighted published nondramatic musical compositions, except for public broadcasting entities covered by §§ 253.5 and 253.6, and except for compositions which are the subject of voluntary license agreements, such as the PBS/NPR/ASCAP, the PBS/NPR/BMI and the PBS/NPR/SESAC license agreements.

(a) Determination of royalty rate

- (1) For the performance of such a work in a feature presentation of PBS:
1993-1997 \$ 199.18
- (2) For the performance of such a work as background or theme music in a PBS program:
1993-1997 \$ 50.46
- (3) For the performance of such a work in a feature presentation of a station of PBS:
1993-1997 \$ 17.02
- (4) For the performance of such a work as background or theme music in a program of a station of PBS:
1993-1997 \$ 3.59
- (5) For the performance of such a work in a feature presentation of NPR:
1993-1997 \$ 20.19
- (6) For the performance of such a work as background or theme music in an NPR program:
1993-1997 \$ 4.90
- (7) For the performance of such a work in a feature presentation of a station of NPR:
1993-1997 \$ 1.43

Copyright Laws and Regulations

- (8) For the performance of such a work as background or theme music in a program of a station of NPR:
1993-1997 \$51
- (9) For the 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.

(b) Payment of royalty rate. The required royalty rate shall be paid to each known copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(c) Records of use. PBS and NPR shall, upon the request of a copyright owner of a published musical work who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner a reasonable opportunity to examine their standard cue sheets listing the nondramatic performances of musical compositions on PBS and NPR programs. Any local PBS and NPR station that is required by paragraph 4b of the PBS/NPR/ASCAP license agreement dated October 19, 1992 to prepare a music use report shall, upon request of a copyright owner who believes a musical composition of such owner has been performed under the terms of this schedule, permit such copyright owner to examine the report.

(d) Terms of use. The fees provided in this schedule for the performance of a musical work in a program shall cover performances of such work in such program for a period of three years following the first performance.

37 CFR 253.5 Performance of musical compositions by public broadcasting entities licensed to colleges or universities.

(a) Scope. This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(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 annually: \$205.
- (2) For all such compositions in the repertory of BMI annually:\$205.
- (3) For all such compositions in the repertory of SESAC annually: \$48.
- (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, BMI and SESAC not later than January 31 of each year.

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

Copyright Laws and Regulations

37 CFR 253.6 Performance of musical compositions by other public broadcasting entities.

(a) Scope. This section applies to the performance of copyrighted published nondramatic musical compositions by radio stations not licensed to colleges, universities, or other nonprofit educational institutions and which are not affiliated with National Public Radio.

(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 noncommercial radio stations within the scope of this section 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, in 1993, \$295; in 1994, \$310; in 1995, \$325; in 1996, \$340; in 1997, \$360.
- (2) For all such compositions in the repertory of BMI, in 1993, \$295; in 1994, \$310; in 1995, \$325; in 1996, \$340; in 1997, \$360.
- (3) For all such compositions in the repertory of SESAC, in 1993, \$63; in 1994, \$66; in 1995, \$69; in 1996, \$72; in 1997, \$75.
- (4) For the performance of any other such compositions, in 1993 through 1997, \$1.

(d) Payment of royalty rate. The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI and SESAC not later than January 31 of each year.

(e) Records of use. A public broadcasting entity subject to this section shall furnish to ASCAP, BMI and SESAC, upon request, a music-use report during one week of each calendar year. ASCAP, BMI and SESAC each shall not in any one calendar year request more than 5 stations to furnish such reports.

37 CFR 253.7 Recording rights, rates and terms.

(a) Scope. This section establishes rates and terms for the recording of nondramatic performances and displays of musical works, other than compositions subject to voluntary license agreements, on and for the radio and television programs of public broadcasting entities, whether or not in synchronization or timed relationship with the visual or aural content, and for the making, reproduction, and distribution of copies and phonorecords of public broadcasting programs containing such nondramatic performances and displays of musical works solely for the purpose of transmission by public broadcasting entities. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) Royalty rate

- (1)(i) For uses described in paragraph (a) of this section of a musical work in a PBS-distributed program, the royalty fees shall be calculated by multiplying the following per-composition rates by the number of different compositions in that PBS-distributed program:

1993-1997	
Feature	\$99.85
Concert feature (per minute)	29.98
Background	50.46
Theme:	
Single program or first series program.....	50.46
Other series program	20.48

- (ii) For such uses other than in a PBS-distributed television program, the

Copyright Laws and Regulations

royalty fee shall be calculated by multiplying the following per-composition rates by the number of different compositions in that program:

1993-1997

Feature..... \$8.25

Concert feature (per minute) 2.17

Background 3.59

Theme:

Single program or first series program 3.59

Other series program 1.43

(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 "National 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.

1993-1997

Feature \$10.81

Concert feature (per half hour)..... 15.87

Background 5.41

Theme:

Single program or first series program 5.41

Other series program 2.16

(3) For the 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 a NPR-produced radio program:

Feature..... \$0.70

Feature (concert) (per half hour) 1.45

Background..... \$0.35

(5) The schedule of fees covers broadcast use for a period of three years following the first broadcast. Succeeding broadcast use periods will require the following additional payment: second three-year period-50 percent; each three-year period thereafter-25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1997 shall be subject to the royalty rates established in this schedule.

(c) Payment of royalty rates. The required royalty rates shall be paid to each known copyright

Copyright Laws and Regulations

owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) Records of use

- (1) Maintenance of cue sheets. PBS and its stations, NPR, or other television public broadcasting entities shall maintain and make available for examination pursuant to subsection (e) copies of their standard cue sheets or summaries of same listing the recording of the musical works of such copyright owners.
- (2) Content of cue sheets or summaries. Such cue sheets or summaries shall include:
 - (i) The title, composer and author to the extent such information is reasonably obtainable.
 - (ii) The type of use and manner of performance thereof in each case.
 - (iii) For Concert Feature music, the actual recorded time period on the program, plus all distribution and broadcast information available to the public broadcasting entity.

(e) Filing of use reports with the copyright arbitration royalty panel and/or Librarian of Congress (CRT). Deposit of cue sheets or summaries. PBS and its stations, NPR, or other television public broadcasting entity shall deposit with the CRT copies of their standard music cue sheets or summaries of same (which may be in the form of hard copy of computerized reports) listing the recording pursuant to this schedule of the musical works of copyright owners. Such cue sheets or summaries shall be deposited not later than July 31 of each calendar year for recordings during the first six months of the calendar year and not later than January 31 of each calendar year for recordings during the second six months of the preceding calendar year. PBS and NPR shall maintain at their offices copies of all standard music cue sheets from which such music use reports are prepared. Such music cue sheets shall be furnished to the CRT upon its request and also shall be available during regular business hours at the offices of PBS or NPR for examination by a copyright owner who believes a musical composition of such owner has been recorded pursuant to this schedule.

[57 FR 60954, Dec. 22, 1993; 58 FR 7051, Feb. 4, 1993; 58 FR 8820, Feb. 17, 1993]

37 CFR 253.8 Terms and rates of royalty payments for the use of published pictorial, graphic, and sculptural works.

(a) Scope. This section establishes rates and terms for the use of published pictorial, graphic, and sculptural works by public broadcasting entities for the activities described in 17 U.S.C. 118. The rates and terms established in this schedule include the making of the reproductions described in 17 U.S.C. 118(d)(3).

(b) Royalty rate

- (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:
 - (A) For a featured display of a work.

1993-1997	\$61.00
-----------------	---------
 - (B) For background and montage display.

1993-1997	\$29.75
-----------------	---------
 - (C) For use of a work for program identification or for thematic use.

1993-1997	\$120.25
-----------------	----------
 - (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

Copyright Laws and Regulations

copyrighted so as to be subject also to payment of a display fee under the terms of this schedule.

1993-1997 \$39.50

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

(A) For a featured display of a work.

1993-1997 \$39.50

(B) For background and montage display.

1993-1997 \$20.25

(C) For use of a work for program identification or for thematic use.

1993-1997 \$80.75

(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.

1993-1997 \$20.25

For the purposes of this schedule the rate for the thematic use of a work in an entire series shall be double the single program theme rate. In the event the work is first used 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) "Featured display" for purposes of this schedule means a full-screen or substantially full-screen display appearing on the screen for more than three seconds. Any display less than full-screen or substantially full-screen, or full-screen for three seconds or less, is deemed to be a "background or montage display".
- (3) "Thematic use" is the utilization of the works of one or more artists where the works constitute the central theme of the program or convey a story line.
- (4) "Display of an art reproduction copyrighted separately from the work of fine art from which the work was reproduced" means a transparency or other reproduction of an underlying work of fine art.

(c) Payment of royalty rate. PBS or other public broadcasting entity shall pay the required royalty fees to each copyright owner not later than July 31 of each calendar year for uses during the first six months of that calendar year, and not later than January 31 for uses during the last six months of the preceding calendar year.

(d) Records of use

- (1) PBS and its stations or other public broadcasting entity shall maintain and furnish either to copyright owners, or to the offices of generally recognized organizations representing the copyright owners of pictorial, graphic and sculptural works, copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.
- (2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.

Copyright Laws and Regulations

- (e) Filing of use reports with the Copyright Office
 - (1) PBS and its stations or other public broadcasting entity shall deposit with the Copyright Office copies of their standard lists containing the pictorial, graphic, and sculptural works displayed on their programs. Such notice shall include the name of the copyright owner, if known, the specific source from which the work was taken, a description of the work used, the title of the program on which the work was used, and the date of the original broadcast of the program.
 - (2) Such listings shall be furnished not later than July 31 of each calendar year for displays during the first six months of the calendar year, and not later than January 31 of each calendar year for displays during the second six months of the preceding calendar year.
- (f) Terms of use
 - (1) The rates of this schedule are for unlimited broadcast use for a period of three years from the date of the first broadcast use of the work under this schedule. Succeeding broadcast use periods will require the following additional payment: Second three-year period-50 percent; each three-year period thereafter-25 percent; provided that a 100 percent additional payment prior to the expiration of the first three-year period will cover broadcast use during all subsequent broadcast use periods without limitation. Such succeeding uses which are subsequent to December 31, 1997 shall be subject to the rates established in this schedule.
 - (2) Pursuant to the provisions of 17 U.S.C. 118 (f), nothing in this schedule shall be construed to permit, beyond the limits of fair use as provided in 17 U.S.C. 107, the production of a transmission program drawn to any substantial extent from a published compilation of pictorial, graphic, or sculptural works.

[58 FR 60954, Dec. 22, 1992; Feb. 4, 1993]

37 CFR 253.9 Unknown copyright owners.

If PBS and its stations, NPR and its stations, or other public broadcasting entity is not aware of the identity of, or unable to locate, a copyright owner who is entitled to receive a royalty payment under this part, they shall retain the required fee in a segregated trust account for a period of three years from the date of the required payment. No claim to such royalty fees shall be valid after the expiration of the three year period. Public broadcasting entities may establish a joint trust fund for the purposes of this section. Public broadcasting entities shall make available to the Copyright Office, upon request, information concerning fees deposited in trust funds.

37 CFR 253.10 Cost of living adjustment.

(a) On December 1, 1993 the Librarian of Congress shall publish in the Federal Register a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1992 to the most recent Index published prior to December 1, 1993. On each December 1 thereafter the Librarian of Congress shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Librarian of Congress shall publish in the Federal Register a revised schedule of rates for § 253.5 which shall adjust those royalty amounts established in dollar amounts according to the change in the cost of living determined as provided in paragraph (a) of this section. Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule of rates for § 253.5 shall become effective thirty days after publication in the Federal Register.

Copyright Laws and Regulations

37 CFR 253.11 Notice of restrictions on use of reproductions of transmission programs.

Any public broadcasting entity which, pursuant to 17 U.S.C. 118, supplies a reproduction of a transmission program to governmental bodies or nonprofit institutions shall include with each copy of the reproduction a warning notice stating in substance that the reproductions may be used for a period of not more than seven days from the specified date of transmission, that the reproductions must be destroyed by the user before or at the end of such period, and that a failure to fully comply with these terms shall subject the body or institution to the remedies for infringement of copyright.