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TO: All Commercial Webcasters (WSA)
FROM: SoundExchange, Inc.
DATE: November 21, 2014
SUBJECT: **REMINDER - 2015 Payment and Reporting Requirements under the Section 112 & 114 Statutory Licenses**

This memorandum contains information for a commercial webcaster that is currently relying on the statutory licenses set forth in Sections 112 and 114 of the U.S. Copyright Act (the “statutory license”) and has previously submitted payments to SoundExchange. We are writing to remind you about the obligations for commercial webcasters for 2015. **Statements of Account for minimum fees and monthly royalty calculation will be available for download from our website beginning December 1, 2015.**

Part I briefly summarizes the commercial webcaster rates and terms in 2015. The best sources of information are the rates and terms themselves, however, and you should study them closely when determining how to proceed for 2015. We also strongly urge you to seek independent legal advice.

Part III briefly provides reminders about our procedures.

All of the forms and information described in this memo can be found on the SoundExchange website at www.soundexchange.com.

I. Rates and Terms for Commercial Webcasters (WSA)

IMPORTANT: Please remember that SoundExchange **does not invoice services**. Each service is obligated to submit payments, Statements of Account, and Reports of Use (if applicable) regularly and in accordance with applicable rates and terms for the statutory license.

Services which have elected the rates and terms for Commercial Webcasters as established pursuant to the Webcaster Settlement Act of 2009 (“WSA”), and set forth at 74 Fed. Reg. 40614 (Appendix A) (Aug. 12, 2009), are obligated to operate under those rates and terms for any statutory licensing activity through the end of 2015. New services must elect no later than 30 days after their initial streaming date. *Services that do not timely elect are ineligible for this category.*

The per performance rate in 2015 is **\$0.0024**. (This is an increase from \$0.0022 in

2014.) The annual minimum fee is due on February 2, 2015, and is \$500 for each station or channel, subject to a \$50,000 cap. This minimum fee is recoupable, and services do not submit additional payment for streaming activity in 2015 until this amount has been exhausted.

The final regulations for the delivery and format of Reports of Use are codified at 37 CFR Part 370. These requirements have been in effect since November 15, 2009. *All webcasters should review these regulations closely. It is your obligation to make sure that you are providing to SoundExchange what is legally required.*

Under the current regulations, Commercial Webcasters must provide year-round census reporting. In addition, the Reports of Use must identify the total number of performances of each sound recording being reported; reporting on an aggregate tuning hour basis is not permitted. Finally, Reports of Use must be submitted on a monthly basis, and they are due by no later than the 45th day after the end of each month.

Licensees owning and operating FCC-licensed AM or FM stations are not eligible for these rates and terms. If you have questions regarding your eligibility, be sure to consult your own legal counsel.

II. The Statutory License

As a reminder to services of what the statutory license administered by SoundExchange covers, the statutory license is for the **public performance** of **sound recordings** by means of certain **eligible non-interactive digital audio transmissions**.

Musical works licensing: If you are webcasting, you almost certainly need to obtain a public performance license for the *musical works* (i.e. the underlying notes and lyrics) as well as for the sound recordings. SoundExchange does not administer licenses relating to the public performance of musical works. You should contact ASCAP, BMI, and SESAC for those rights.

Interactive streaming and downloads: In addition, the statutory license administered by SoundExchange does not cover interactive streaming or downloads of any kind, including downloadable “podcasts” of archived programming. **If you are offering podcasts that include sound recordings, then you may need to obtain a direct license from the relevant copyright owners. SoundExchange does not administer licenses for podcasting.**

As always, if you have any questions about whether your activities are within the scope of the statutory license, you should contact your own legal counsel.

III. Procedural Changes and/or Reminders



A. SoundExchange Licensee Direct: In 2015, we are planning to launch an online portal for licensees to use for submission of payments, Statements of Account and Reports of Use. If your service would be interested in volunteering to participate in a “beta” test program involving SoundExchange Licensee Direct, please contact us at your earliest convenience.

B. ISRC Validation: As you may know, not only are International Standard Recording Codes (“ISRCs”) the preferred method of sound recording identification for Reports of Use, but SoundExchange has one of the world’s largest repertoire databases containing them. If your Reports of Use currently do not contain them for some or all of your sound recordings, and you are interested in participating in an inventory file exchange to obtain them, please contact us at licenseerelations@soundexchange.com.

C. Delivery Address for Payments and Statements of Account: As a reminder, until the launch of SoundExchange Licensee Direct, all Statements of Account (and, if needed, accompanying payments) should be sent to one of the following addresses:

Standard USPS Mail

**SoundExchange
Dept. 4037
Washington, DC 20042-4037**

Overnight Delivery / Courier Service

**SoundExchange
Attn: Royalty Administration
733 10th Street NW – 10th Floor
Washington, DC 20001**

All payments should be made payable to “**SoundExchange**” or “**SoundExchange, Inc.**”

Any and all other correspondence may be sent to the attention of Licensee Relations at the 733 10th St. NW address or emailed to licenseerelations@soundexchange.com.

Statements of Account for both minimum fees and monthly royalty calculation will be available on our website, beginning December 1, 2014.

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This memorandum does not constitute a waiver of our members’ right to recover damages incurred by virtue of any unlicensed transmissions or reproductions of copyrighted sound recordings, and such rights as well as claims for other relief are expressly retained. You should be aware that SoundExchange does not make any determination as to whether a service is in fact eligible to use the statutory license. Instead, the applicable authorization for such services to publicly perform sound recordings derives from federal law, and eligibility for such activity is a matter of law. Accordingly, SoundExchange’s acceptance of any payments, Statements of Account, Reports



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of Use, or anything else, does not express or imply any acknowledgment that a service is or has been eligible to make use of the statutory license or that a service is otherwise in compliance with the statutory license. SoundExchange, as well as the performers and copyright owners on whose behalf SoundExchange collects royalties expressly reserve their rights and all other claims for relief.

Please understand that we are not providing you with legal advice about rights or royalties under the Copyright Act or regulations promulgated pursuant thereto. Furthermore, any communications between you and SoundExchange shall not create an attorney-client relationship and the information herein is not subject to any attorney-client confidentiality privileges. You should consult with your own legal counsel before taking any actions based upon statements made in this memorandum.

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If you have any difficulty accessing the forms from the website, or have any questions about the above information, please do not hesitate to contact our Licensee Relations team at 202-559-0555 or email us at licenseerelations@soundexchange.com. Additionally, if you believe this memorandum has reached you in error or you wish future correspondence from SoundExchange to be directed to another individual and/or address, please contact us via the above e-mail address.