



733 10th Street, NW | 10th Floor | Washington, DC 20001
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TO: All Commercial Webcasters (including broadcasters simulcasting an AM or FM transmission and/or “internet-only” webcasters)

FROM: SoundExchange, Inc.

DATE: November 20, 2018

SUBJECT: **REMINDER** - 2019 Payment and Reporting Requirements under the Section 112 & 114 Statutory Licenses

This memorandum contains information about the obligations 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”). We are writing to remind you about the obligations for commercial webcasters for 2019. For more information regarding the 2016-2020 webcasting rates and terms, [please consult the Copyright Royalty Judges’ webcasting determination](#). **Many of these obligations are the same as they were for 2018.**

We encourage services to log into [SoundExchange Licensee Direct](#) beginning *December 15* to confirm/calculate, certify and pay for their 2019 minimum fees, which are due on or before January 31, 2019 for all services streaming in January 2019.

Part I briefly summarizes the commercial webcaster rates and terms in 2019. The best sources of information are the rates and terms themselves, however, and you should study them closely when determining how to proceed for 2019. We also strongly urge you to seek independent legal advice.

Part II briefly discusses the scope of the statutory license that SoundExchange administers.

Part III briefly discusses how the Music Modernization Act (made law on October 11, 2018) affects services (1) who are currently streaming recordings created prior to February 15, 1972, or (2) who did so on or after October 11, 2015.

Part IV briefly provides reminders about our procedures.

Please use **SoundExchange Licensee Direct** for *all* royalty submissions, including Reports of Use: <http://licenseedirect.soundexchange.com>. All forms and information described in this memo can also be found on the SoundExchange website at www.soundexchange.com.



I. Rates and Terms for Commercial Webcasters (CRB)

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

The royalty rate for Commercial Webcasters in 2019 as set by the Copyright Royalty Board (“CRB”) is as follows: **\$0.0018 per performance for nonsubscription transmissions, and \$0.0023 per performance for subscription transmissions.** (Under the methodology determined by the Copyright Royalty Board at 37 CFR §380.10(c), ***there is no increase of the rates from 2018*** due to the Consumer Price Index.)

The annual minimum fee is due on January 31, 2019, 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 2019 until this amount has been exhausted.

Commercial Webcasters must calculate royalties, and certify monthly Statement of Account forms, which may be done using [Licensee Direct](#). Monthly Statements of Account are due within 45 days after the end of each calendar month, even if the licensee does not owe a payment. If the Statement of Account indicates a payment is owed, that payment is due with the Statement of Account, and can also be made using [Licensee Direct](#). (For information about alternative methods of submission, please see Section III.)

The final regulations for the delivery and format of Reports of Use are codified at 37 CFR Part 370. *All webcasters should review these regulations closely. It is your obligation to make sure that you are providing to SoundExchange what is legally required.* Proposed changes to the notice and recordkeeping regulations are pending review by the CRB, so there may be changes or clarification to the notice and recordkeeping terms for statutory licensees at some point in the future. Please visit our website regularly, and as changes occur, we will update our website accordingly.

Under the current regulations, most Commercial Webcasters must provide year-round census reporting. In addition, the Reports of Use from those services 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 monthly, and they are due by no later than the 45th day after the end of each month. “Eligible minimum fee webcasters” who (1) do not exceed the \$500 per station/channel minimum fee, and (2) are owned/operated by FCC-licensed AM or FM broadcasters may choose to alternatively submit *sample* Reports of Use (consisting of two seven-consecutive-24 hour day periods). These are due *quarterly*, within 45 days after the end of each quarter. Reports of Use must be formatted and delivered to SoundExchange in a specific manner; please visit our website for more information: <http://www.soundexchange.com/service->

[provider/commercial-webcaster/commercial-webcaster-crb/](#).

We encourage licensees to use [Licensee Direct](#) for their Reports of Use submission, as it offers enhanced quality assurance and the ability to receive “real time” data feedback and statistics, prior to completing submission. At this time, services are still able to alternatively submit Reports of Use via email (reports@soundexchange.com). If you need additional assistance with Report of Use delivery to us, [please contact us](#).

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, SESAC and Global Music Rights, as appropriate, 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. Music Modernization Act of 2018

On October 11, 2018, the Music Modernization Act of 2018 (the “MMA”) was signed into law. One of the many changes to the Copyright Act brought about by this law relates to the use of sound recordings created prior to February 15, 1972 (“Pre-72 Recordings”) by services eligible for the statutory license. Prior to the passage of the MMA, Pre-72 Recordings were protected by state law. The MMA now creates a *federal obligation* to obtain a license for the reproduction and public performance of all Pre-72 Recordings, and it provides that eligible services may reproduce and publicly perform Pre-72 Recordings using the statutory license.

What does this mean for you?

A. If you always reported and paid for Pre-72 Recordings in your submissions to SoundExchange, this change in the law does not affect you. In other words, feel free to continue reporting *all* eligible recordings within your submissions, and skip ahead to section IV below.

B. If you currently do not report and pay for Pre-72 Recordings in your submissions to SoundExchange, then you must either:

1. obtain direct licensing with the applicable rights owners of those recordings, **or**
2. include Pre-72 Recordings within your statutory licensing submissions to SoundExchange. There is no need to distinguish them; please report and pay for them as you would any other eligible sound recording.

C. If you did not obtain a direct license or report and pay for Pre-72 Recordings in your submissions to SoundExchange between October 11, 2015 and October 10, 2018, you may choose to submit payments and reporting to SoundExchange at the applicable statutory licensing rates per year. Providing such payments and reporting to SoundExchange on or before July 8, 2019 will avoid liability for the use of Pre-72 Recordings that you otherwise may have under state law. **If this option applies to you, please contact us immediately, to assist you with this submission process.**

We believe most services will *not be affected* by this new law, as you likely already *have been* including Pre-72 Recordings within your statutory licensing submissions. But, if this does affect you, or you have further questions, please seek legal advice from your own counsel, and (of course) feel free to contact us, and we will do our best to help.

IV. Procedural Changes and/or Reminders

A. SoundExchange ISRC Search: Use of International Standard Recording Codes (ISRCs) is the *preferred* way for licensees to identify sound recordings within Reports of Use. (Services not using ISRCs must provide both album name and marketing label to identify sound recordings within Reports of Use.) SoundExchange ISRC Search is a *free* option for licensees and others to search for (and download) ISRCs from our renowned repertoire database. Please visit <http://isrc.soundexchange.com> today to look up ISRCs for any recordings! We also offer an API for services to develop integrated access to this site. Please contact RepMatchService@soundexchange.com for more information.

B. Repertoire Match Service: SoundExchange also offers a *free* matching service to our vast repertoire database. You can upload a file containing all tracks in your catalog through Licensee Direct. We'll match them to ISRCs provided by the rights owners themselves and return the file, so you can update your entire catalog at once. Please visit [SoundExchange Licensee Direct](#) for more information.



C. ROU Augmentation: Services logging into [SoundExchange Licensee Direct](#) may access versions of their submitted ROUs that we have augmented (where possible) with ISRCs, populated from our vast repertoire database. In addition, we highlight which parts of your submissions were potentially missing required information. We encourage you to regularly download these augmented files, in order to populate your own databases with this important identification field for sound recordings, so that your future submissions can include them, improving the efficiency for the entire royalty distribution process.

D. Delivery Address for Payments and Minimum Fee Statements of Account:
We encourage all services to use SoundExchange Licensee Direct to calculate, certify and pay for royalties online, including the renewal of their minimum fee if no changes occurred to their service from the previous year. New services, or services who have made changes to their service from the previous year, should send us (signed) Minimum Fee Statements of Account ([available on our website](#)) and payments in the following manner:

Email (SOAs *only*, as a signed pdf): licenseerelations@soundexchange.com

Physical delivery (forms and payments *only*):

Standard USPS Mail
SoundExchange, Inc.
P.O. Box 75202
Baltimore, MD 21275-5202

Overnight Delivery / Courier Service
Lockbox Services 75202
Wells Fargo Bank
7175 Columbia Gateway Drive
Attn: SoundExchange, Inc., Lockbox 75202
Columbia, MD 21046
Tel.: 1-800-289-3557

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 SoundExchange, 733 10th Street NW, 10th Floor, Washington, DC 20001 or emailed to licenseerelations@soundexchange.com. **Please do not send payments/forms to our DC address, unless instructed to do so by a Licensee Relations team member.**

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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



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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 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.