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TO: All Noncommercial 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 for a noncommercial 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 noncommercial 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 three categories of noncommercial 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 Noncommercial Webcasters



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.

As a reminder, to be eligible for noncommercial webcasting rates and terms, a service must have received (or applied for) tax-exempt status under section 501 of the Internal Revenue Code, or must be operated by a governmental entity for public purposes. **If you have questions as to your eligibility for any of the below categories, or for noncommercial status in general (e.g., if you are a CPB-qualified entity), please seek legal advice.**

There are three categories applicable to noncommercial webcasters in 2019: Noncommercial Webcasters (CRB), Noncommercial Educational Webcasters, and Public Radio Broadcasters.

- A. **Noncommercial Webcasters (CRB)**. The Noncommercial Webcaster rates and terms are set forth in 37 CFR Part 380.
- a. **Minimum Fee Payment and Statement of Account:** Services that operate as Noncommercial Webcasters must pay a \$500 recoupable, non-refundable minimum fee per station or channel by January 31, 2019 (accompanied by a signed and completed Statement of Account form, either mailed/emailed or calculated and certified online using **SoundExchange Licensee Direct**). This annual fee covers the first 159,140 aggregate tuning hours (“ATH”) per month; *any* usage greater than this must be paid for as described in (b) below. Services must submit a monthly Statement of Account listing their aggregate tuning hours for the month no later than 45 days after the end of the month.
 - b. **If needed, additional usage fees:** Services incur additional usage fees on all transmissions above 159,140 ATH per month. Usage fees for 2019 must be paid at the rate of **\$0.0018 per performance**. Usage fees are due by the 45th day after the end of the month in which the usage fees are incurred, and must be certified in Licensee Direct.
 - c. Under the methodology determined by the Copyright Royalty Board at 37 CFR §380.10(c), **there will be no change to the rates in 2019** due to the Consumer Price Index.
 - d. **Reports of Use**
 - i. Services owning and operating FCC-licensed AM or FM stations that do not exceed the annual minimum fee in royalties (“eligible minimum fee webcasters”) can provide sample-based Reports of Use (i.e., two weeks of reporting per calendar quarter). Sample-based reports by Noncommercial Webcasters may report audience listenership using the combination of (a) the sample period’s sum of ATH, (b) the station or

channel names, and (c) the play frequency (i.e. “spins”) of each track during the sample period, instead of actual total performances, but the use of actual total performances is encouraged. These quarterly Reports of Use for 2019 are due within 45 days after the end of each calendar quarter.

- ii. All other services must submit monthly Reports of Use, containing census information, including actual total performances. Monthly Reports of Use are due within 45 days after the end of each month.

B. **Noncommercial Educational Webcasters.** The Noncommercial Educational Webcaster rates and terms are set forth in 37 CFR Part 380. Noncommercial Educational Webcasters are student-run noncommercial webcasters owned or sanctioned by domestically accredited educational institutions. They are also non-subscription services, and must not be a “CPB qualified” service (i.e., qualified to receive funding from the Corporation for Public Broadcasting).

- a. **Minimum Fee Payment and Statement of Account:** Services that operate as Noncommercial Educational Webcasters must pay a \$500 recoupable, non-refundable minimum fee per channel or station by January 31, 2019 (accompanied by a signed and completed Statement of Account form, either mailed/emailed or calculated and certified online using **SoundExchange Licensee Direct**). This annual fee covers the first 159,140 aggregate tuning hours (“ATH”) per month.
- b. **If ATH threshold is exceeded:** Services exceeding the 159,140 ATH monthly threshold more than once in a single year are no longer eligible for the Noncommercial Educational Webcaster category, and must restate/resubmit their calendar year activity as a Noncommercial Webcaster (CRB). If this condition appears to be applicable to your service, please contact us at your earliest convenience.
- c. **Reports of Use:**
 - i. Eligible Noncommercial Educational Webcasters that did not exceed 80,000 ATH in any month for any individual channel or station more than once in 2018, and do not expect to exceed 80,000 ATH in any month in 2019, can elect reporting relief and pay an additional \$100 reporting waiver fee in lieu of providing Reports of Use. **NOTE:** Election (and payment) for the reporting waiver must be submitted with the minimum fee, on or before **January 31, 2019**.
 - ii. Services that exceed 80,000 ATH in a given month more than once, but do not exceed 159,140 ATH in a given month more than once, can provide sample-based Reports of Use (i.e., two weeks of reporting per calendar quarter). Services eligible for the reporting waiver described in (c)(i) above may also choose to provide sample-based Reports of Use and forgo the \$100 reporting waiver fee. Sample-based reports by Noncommercial Educational Webcasters do not require actual total performances or ATH,

but the use of actual total performances or ATH is encouraged. These four quarterly Reports of Use for 2019 are due no later than January 31, 2019.

- iii. Services that exceed 159,140 ATH in a month more than once in a calendar year must resubmit their Reports of Use as a Noncommercial Webcaster (CRB), and should contact us immediately for additional assistance.

- C. **Public Broadcasters.** National Public Radio, the Corporation for Public Broadcasting, American Public Media, Public Radio International, and certain public radio stations are all operating under a negotiated agreement with SoundExchange that was published as a part of the 2016-2020 rates and terms at 37 CFR Part 380. If you believe that your service is, or should be, a part of this agreement, please contact your applicable public radio association for more information and instruction.

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 must 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.

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 now 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 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.