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TO: All Business Establishment Services

FROM: SoundExchange, Inc.

DATE: November 16, 2022

SUBJECT: **REMINDER** - 2023 Payment and Reporting Requirements under the Section 112 License

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This memorandum contains information for a business establishment service that is currently relying on the statutory license set forth in Section 112 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 business establishment services for 2023. **Apart from a *small* increase to the rate itself, most of these obligations are the same as they were for 2022.**

If you have not already done so, we encourage services to log into [Licensee Direct](#) to **confirm/calculate, certify and pay for their 2022 minimum fees**, which were due on or before January 31, 2022 for all services streaming in January 2022. Additional royalties for 2022 may also be owed, so (if applicable to you) please make submissions as soon as possible to mitigate potential late fees.

Part I briefly summarizes the business establishment services rates and terms in effect, beginning in 2023. [The best sources of information are the rates and terms themselves](#), however, and you should study them closely when determining how to proceed for 2023. 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 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](http://www.soundexchange.com).

## I. Rates and Terms for Business Establishment Services

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

The rate for Business Establishment Services in 2023 as set by the Copyright Royalty Board (“CRB”) is **13.5%** of Gross Proceeds. (This is an increase from 2022, when the rate was 13.25%.) Services must submit a monthly Statement of Account, calculating this liability, and any accompanying payment (if required).

**The annual minimum fee is \$20,000 and is due on Tuesday, January 31, 2023.** Services that first make ephemeral copies between February 1 and December 31, 2023 must pay this minimum fee within 45 days after the end of the month in which such activity begins. This minimum fee is recoupable, and services do not submit additional payment in 2023 until this amount has been exhausted.

Business Establishment Services must calculate, 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 384](#). *All services 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, Business Establishment Services 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. **NOTE: Services unable to provide actual total performances as audience measurement, due to technical or business limitations, should instead provide the following combination for each sound recording listed: aggregate tuning hours (per station/channel, if knowable), the name of the station/channel, and the play frequency (“spins”) for the sound recording.** 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.

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](mailto:reports@soundexchange.com)). If you need additional assistance with Report of Use delivery to us, [please contact us](#).

## II. The Statutory License

The statutory license used by Business Establishment Services is for the making of ephemeral copies used in the public performance of sound recordings via digital audio transmissions into business establishments.

**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.**

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 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](mailto:RepMatchService@soundexchange.com) for more information.

**B. Repertoire Matching Service:** SoundExchange 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, and 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 should submit their Minimum Fee Statement of

Account *online* using [Licensee Direct](#). Existing services should *also* submit their Minimum Fee Statement *online* after signing in to [Licensee Direct](#).

**Regular mail delivery:**

SoundExchange, Inc  
PO Box #715202  
Philadelphia, PA 19171-5202

**Overnight courier:**

Lockbox Services - #0075202  
SoundExchange, Inc.  
MAC Y1372-045  
401 Market Street  
Philadelphia, PA 19106

All payments should be made payable to “**SoundExchange**” or “**SoundExchange, Inc.**” All payments sent to the above locations must be accompanied by a physical copy of the signed Statement of Account form, printed from Licensee Direct.

Any and all *other* correspondence may be sent to the attention of Licensee Relations at SoundExchange, 733 10<sup>th</sup> Street NW, 10<sup>th</sup> Floor, Washington, DC 20001 or emailed to [licenseerelations@soundexchange.com](mailto: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 liabilities 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](mailto:licenseerelations@soundexchange.com). Additionally, if you believe this memorandum has reached you in error, or if you need future correspondence from SoundExchange to be directed to another individual and/or address, please contact us via the above e-mail address.