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TO: Noncommercial Webcasters

FROM: SoundExchange, Inc.

DATE: December 1, 2022

SUBJECT: **REMINDER - 2023 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 2023, and these are described in further detail in Part I of this document.

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 noncommercial webcaster 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 2022. 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>. 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: 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 \$1,000 recoupable, non-refundable minimum fee per station or channel (accompanied by a signed and completed Statement of Account form, either mailed/mailed or calculated and certified online using **SoundExchange Licensee Direct**). As in previous years, the annual fee *still* 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. **Minimum fees for services operating as of January 1, 2023 are due on or before Tuesday, January 31, 2023.** Services must *also* submit a monthly Statement of Account, listing their year-to-date aggregate tuning hours (by month), no later than 45 days after the end of each month.
- b. **If needed, additional usage fees:** Services incur additional usage fees on all transmissions above 159,140 ATH per month. Usage fees for 2022 must be paid at the rate of **\$0.0024 per performance**. This is a small increase of \$0.0002 from 2022, and is triggered by an increase in the Consumer Price Index.¹ 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. **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)

¹ For more information about the cost of living adjustment, please see <https://www.federalregister.gov/public-inspection/2021-26062/cost-of-living-adjustment-to-royalty-rates-for-webcaster-statutory-license>

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 2023 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). *For additional information, please see our separate 2023 memo to Noncommercial Educational Webcasters.*

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 2021-2025 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. 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 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 should submit their Minimum Fee Statement of Account *online* using [Licensee Direct](#). Existing services should *also* submit their Minimum Fee Statement of Account *online* after signing in to [Licensee Direct](#). If prospective and current licensees are unable to submit their Statement of Account online, please contact us at licenseerelations@soundexchange.com.

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Physical delivery (payments *only*):

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 physical addresses *must* be accompanied by physical copy of the signed Statement of Account, printed from Licensee Direct.

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 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.