

of the Port Delaware Bay (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Entry into or transiting within the safety zone is prohibited unless vessels obtain permission from the Captain of the Port via VHF-FM channel 16, or make satisfactory passing arrangements via VHF-FM channel 88, with the dredge NEW YORK or tug INDIAN DAWN per this section and the Rules of the Road (33 CFR chapter I, subchapter E). Vessels requesting to transit shall contact the dredge NEW YORK or tug INDIAN DAWN on channel 88 at least 1 hour prior to arrival and at 30 minutes prior to arrival.

(2) Vessels granted permission to enter and transit the safety zone must do so in accordance with any directions or orders of the Captain of the Port, his designated representative, dredge NEW YORK, or tug INDIAN DAWN. No person or vessel may enter or remain in a safety zone without permission from the Captain of the Port, dredge NEW YORK, or tug INDIAN DAWN.

(3) All vessels must operate at the minimum safe speed necessary to maintain steerage and reduce wake.

(4) This section applies to all vessels that intend to transit through the safety zone except vessels that are engaged in the following operations: Enforcement of laws, service of aids to navigation, and emergency response.

(d) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the safety zone by federal, state, and local agencies.

(e) *Enforcement periods.* This section will be enforced continuously from November 19, 2018 through November 30, 2018, or completion of the equipment removal, whichever is sooner.

Dated: November 19, 2018.

**S.E. Anderson,**

*Captain, U.S. Coast Guard Captain of the Port Delaware Bay.*

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## LIBRARY OF CONGRESS

### Copyright Royalty Board

#### 37 CFR Part 384

[Docket No. 17-CRB-0001-BER (2019-2023)]

#### Determination of Royalty Rates and Terms for Making Ephemeral Copies of Sound Recordings for Transmission to Business Establishments (Business Establishments III)

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Final rule.

**SUMMARY:** The Copyright Royalty Judges (Judges) publish final regulations setting rates and terms for the making of an ephemeral recording of a sound recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

**DATES:** *Effective date:* January 1, 2019.

**ADDRESSES:** For access to the docket to read submitted background documents go to eCRB, the Copyright Royalty Board's electronic filing and case management system, at <https://app.crb.gov/> and search for docket number 17-CRB-0001-BER (2019-2023).

**FOR FURTHER INFORMATION CONTACT:** Anita Blaine, CRB Program Specialist, by telephone at (202) 707-7658 or email at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:** In 1995, Congress enacted the Digital Performance Right in Sound Recordings Act, Public Law 104-39, which created an exclusive right, subject to certain limitations, for copyright owners of sound recordings to perform publicly those sound recordings by means of certain digital audio transmissions. Among the limitations on the performance right was the creation of a statutory license for nonexempt, noninteractive digital subscription transmissions. 17 U.S.C. 114(d).

The scope of the section 114 statutory license was expanded in 1998 upon the passage of the Digital Millennium Copyright Act of 1998 (DMCA), Public Law 105-34. The DMCA created, *inter alia*, a statutory license for the making of an "ephemeral recording" of a sound recording by certain transmitting organizations. 17 U.S.C. 112(e). This license, among other things, allows entities that transmit performances of sound recordings to business establishments to make an ephemeral recording of a sound recording for later transmission, pursuant to the

limitations set forth in section 114(d)(1)(C)(iv).

Chapter 8 of the Copyright Act requires the Judges to conduct proceedings every five years to determine the royalty rates and terms for "the activities described in section 112(e)(1) relating to the limitation on exclusive rights specified by section 114(d)(1)(C)(iv)." 17 U.S.C. 801(b)(1), 804(b)(2). Accordingly, the Judges published a notice commencing the current proceeding and requesting that interested parties submit petitions to participate. 82 FR 143 (Jan. 3, 2017).

The Judges received Petitions to Participate from Mood Media Corporation, Music Choice, David Powell, David Rahn,<sup>1</sup> Rockbot, Inc.,<sup>2</sup> Sirius XM Radio Inc., and SoundExchange, Inc. The Judges initiated the three-month negotiation period and directed the participants to submit written direct statements no later than May 14, 2018.

On May 4, 2018, the Judges received a joint *Motion to Adopt Settlement* from Mr. Rahn, Mood Media Corp., Music Choice, Sirius XM Radio Inc., and SoundExchange, Inc., (Moving Parties) stating that they had reached a settlement obviating the need for written evidentiary statements or a hearing.<sup>3</sup>

Section 801(b)(7)(A) of the Copyright Act authorizes the Judges to adopt royalty rates and terms negotiated by "some or all of the participants in a proceeding at any time during the proceeding" provided they are submitted to the Judges for approval. The Judges must provide "an opportunity to comment on the agreement" to participants and non-participants in the rate proceeding who "would be bound by the terms, rates, or other determination set by any

<sup>1</sup> In his Petition to Participate, Mr. Rahn identified himself as a shareholder in SBR Creative Media, Inc. and its subsidiary CustomerChannels.net, LLC.

<sup>2</sup> Rockbot withdrew its Petition to Participate on January 11, 2018.

<sup>3</sup> According to the Motion, David Powell, although having filed a Petition to Participate, did not otherwise participate in the proceeding. *Motion* at 2. The Moving Parties represent that counsel for Mood Media attempted unsuccessfully to contact Mr. Powell to discuss the filing of the Motion. *Id.* at 2-3. Mr. Powell also did not respond to the request for comments on the proposed regulations. On May 14, 2018, shortly before the proposed regulations were published, however, Mr. Powell filed a "Verified Motion for Enlargement of Time, and Agreed with Settlement Parties to Adopt Settlement Ex-Parte," which the Judges accept as a notice that Mr. Powell does not object to the settlement. The Judges make no finding with regard to Mr. Powell's eligibility to participate in this proceeding. To the extent Mr. Powell has an interest in the business establishment services license, he will be bound by the royalty rates and terms the Judges adopt.

agreement. . . .” 17 U.S.C. 801(b)(7)(A)(i). Participants in the proceeding may also “object to [the agreement’s] adoption as a basis for statutory terms and rates.” *Id.*

The Judges “may decline to adopt the agreement as a basis for statutory terms and rates for participants that are not parties to the agreement,” only “if any participant [in the proceeding] objects to the agreement and the [Judges] conclude, based on the record before them if one exists, that the agreement does not provide a reasonable basis for setting statutory terms or rates.” 17 U.S.C. 801(b)(7)(A)(ii). Accordingly, on May 17, 2018, the Judges published a document requesting comment on the proposed rates and terms. 83 FR 22907. The Judges received no timely comments or objections in response to the May 17 document.

Having received no opposition to the proposal and finding that the agreement among the moving parties provides a reasonable basis for setting statutory terms and rates, the Judges, by this notice, adopt as final regulations the rates and terms for the making of an ephemeral recording by a business establishment service for the period January 1, 2019, through December 31, 2023.

**List of Subjects in 37 CFR Part 384**

Copyright, Digital audio transmissions, Ephemeral recordings, Performance right, Sound recordings.

**Final Regulations**

For the reasons set forth in the preamble, the Judges amend part 384 of chapter III of title 37 of the Code of Federal Regulations as follows:

**PART 384—RATES AND TERMS FOR THE MAKING OF EPHEMERAL RECORDINGS BY BUSINESS ESTABLISHMENT SERVICES**

■ 1. The authority citation for part 384 continues to read as follows:

Authority: 17 U.S.C. 112(e), 801(b)(1).

**§ 384.1 [Amended]**

■ 2. In § 384.1, amend paragraph (a) by removing “January 1, 2014, through December 31, 2018” and adding “January 1, 2019, through December 31, 2023” in its place.

■ 3. Amend § 384.3 by:

■ a. Revising paragraph (a); and

■ b. In paragraph (b), removing “\$10,000” and adding “\$20,000” in its place.

The revision reads as follows:

**§ 384.3 Royalty fees for ephemeral recordings.**

(a) *Basic royalty rate.* (1) For the making of any number of Ephemeral Recordings in the operation of a Business Establishment Service, a Licensee shall pay a royalty equal to the following percentages of such Licensee’s “Gross Proceeds” derived from the use in such service of musical programs that are attributable to copyrighted recordings:

Year	Rate %
2019 .....	12.5
2020 .....	12.75
2021 .....	13.0
2022 .....	13.25
2023 .....	13.5

(2) “Gross Proceeds” as used in this section means all fees and payments, including those made in kind, received from any source before, during or after the License Period that are derived from the use of copyrighted sound recordings during the License Period pursuant to 17 U.S.C. 112(e) for the sole purpose of facilitating a transmission to the public of a performance of a sound recording under the limitation on exclusive rights specified in 17 U.S.C. 114(d)(1)(C)(iv). The attribution of Gross Proceeds to copyrighted recordings may be made on the basis of:

(i) For classical programs, the proportion that the playing time of copyrighted classical recordings bears to the total playing time of all classical recordings in the program; and

(ii) For all other programs, the proportion that the number of copyrighted recordings bears to the total number of all recordings in the program.

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**§ 384.5 [Amended]**

■ 4. In § 384.5, amend paragraph (d)(4) by removing the second comma before the word “subject”.

Dated: September 17, 2018.

David R. Strickler,  
*Copyright Royalty Judge.*

Jesse M. Feder,  
*Copyright Royalty Judge.*

Suzanne M. Barnett,  
*Chief Copyright Royalty Judge.*

**Carla D. Hayden,**

*Librarian of Congress.*

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**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA–R03–OAR–2017–0598; FRL–9986–76–Region 3]

**Approval and Promulgation of Air Quality Implementation Plans; Maryland; Regional Haze Five-Year Progress Report**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving Maryland’s regional haze progress report, submitted on August 9, 2017, as a revision to its State Implementation Plan (SIP). Maryland’s SIP revision addresses Clean Air Act (CAA) provisions and EPA regulations that require each state to submit periodic reports describing the State’s progress towards reasonable progress goals (RPGs) established for regional haze and to make a determination of the adequacy of the State’s existing regional haze SIP. The EPA is approving Maryland’s determination that the State’s regional haze SIP is adequate to meet the RPGs for the first implementation period.

**DATES:** This final rule is effective on December 26, 2018.

**ADDRESSES:** EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2017–0598. All documents in the docket are listed on the <https://www.regulations.gov> website. Although listed in the index, some information is not publicly available, e.g., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

**FOR FURTHER INFORMATION CONTACT:** Erin Trouba, (215) 814–2023, or by email at [trouba.erin@epa.gov](mailto:trouba.erin@epa.gov).

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Under the Regional Haze Rule, each state was required to submit to EPA an implementation plan addressing regional haze visibility impairment for the first implementation period through 2018, and then was required to submit