

Audio Streaming – Do’s and Don’ts

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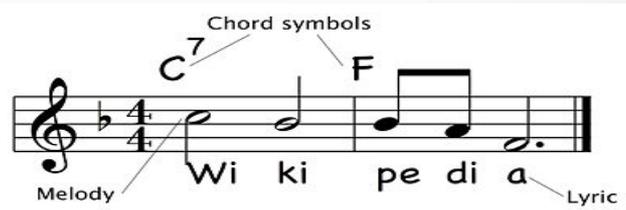
What We Will Discuss

- Music Licensing Issues for Broadcasters Who Stream
 - Music Licensing 101
 - Public Performance Right for Musical Compositions
 - Public Performance Right for Sound Recording
- Pending Policy Issues for Music Rights
- Issues with Commercials In Streams
- Other Legal Issues for Streaming

Music Copyright 101

Two copyrights exist in every recorded song:

1. Underlying **musical work** or **musical composition**
(music notes and lyrics)



2. **Sound recording** or **master recording**
(permanent fixation of sounds)



Music Copyright 101

- Both the **underlying musical work copyright** and the **sound recording copyright** have a separate “public performance right” associated with them.
- The performance right in the musical composition is the right for which radio has paid to ASCAP, BMI and SESAC for years
- The performance right in sound recordings is relatively new and relatively narrow
 - Created in 1995, extended in 1998, only for digital audio performances
 - Currently, no performance right exists for terrestrial radio (i.e. AM/FM broadcasts)

Who Gets Paid for Music Rights?

- Musical Composition
 - Payments made to ASCAP, BMI and SESAC (for now)
 - 50% of those payments go to composers, 50% to music publishers
- Sound Recording
 - Payments for non-interactive streaming go to SoundExchange (usually)
 - 50% of those payments go to the copyright holder (usually the record label), 45% to the “featured” recording artist and 5% go to background musicians and singers
- Direct Licenses can change these distributions

Musical Composition Rights

How much do you pay, and how do you pay it?

- ASCAP/BMI – part of your broadcast license, but bigger deduction for commissions
- SESAC – separate license
- Noncommercial stations have separate license fee to ASCAP, BMI and SESAC – not covered by your over-the-air fees

Sound Recording Performance Right

- Limited right for digital performances only (so far)
- We'll talk about non-interactive rights – for interactive rights, need to approach labels directly (note - ASCAP, BMI and SESAC won't be enough either – publishers also needed)
- “Statutory License” so need to register with the Copyright Office - gives you rights to stream all legally released recordings in the US

Notice of Use of Sound Recordings under Statutory License

Service's 1st step

- Service files with Copyright Royalty Board
- CRB forwards to SoundExchange
- “Eligible Nonsubscription Transmission Service” under both Sections 112 and 114
- Helpful source of information
 - Name of service
 - URL
 - Date of first transmission
 - Contact info

<http://www.copyright.gov/forms/form112-114nou.pdf>



Notice of Use of Sound Recordings under Statutory License

United States Copyright Office

In accordance with 37 CFR 270.4, the transmission service named below hereby files with the Library of Congress, Copyright Office, a notice stating the service's intention to use the statutory license under sections 112(e) or 114(d)(2), or both, of title 17 of the *United States Code*, as amended by Public Law 104-39, 109 Stat. 336, and Public Law 105-304, 112 Stat. 2860.

Check, if applicable:

Amended filing

Please enclose a check or money order for the nonrefundable filing fee, payable to *Register of Copyrights*. Mail to:

*Copyright Royalty Board
ATTN: Licensing Division
PO Box 79077
Washington, DC 20024-0400*

Please type or print the requested information for each item. If this is an amended filing, please indicate which item contains new information by checking the new information box to the left of that item.

New Information

1 Name of service _____

2 Mailing address _____

3 Telephone no. _____

4 Fax no. _____

5 Website address of service <http://> _____

NOTE: A post office box is acceptable if it is the only address that can be used in that geographic location.

6 Nature of license and category of service: (Check all that apply)

a **Statutory license for digital transmissions, 17 USC §114(d)(2)**

Preexisting subscription service Eligible nonsubscription transmission service

Preexisting satellite digital audio radio service New subscription service

b **Statutory license for making ephemeral phonorecords, 17 USC §112(e)**

Preexisting subscription service Eligible nonsubscription transmission service

Preexisting satellite digital audio radio service New subscription service

A business establishment making ephemeral phonorecords in furtherance of an exempt digital transmission pursuant to 17 USC §114(d)(1)(C)(iv)

7 Date or expected date of _____

a *Initial digital transmission of a sound recording* _____

b *Initial use of the §112(e) license for the purpose of making ephemeral recordings of sound recordings* _____

8 Officer or authorized representative of service _____

a Name _____

b Title _____

c Date _____

d Signature _____

e Email address _____

NOTE: The date of filing will be the date when the notice and fee are both received in the Copyright Office.

M-269—07/2006
American LegalNet, Inc.
www.USCourtForms.com

Need to Register with SoundExchange



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broadcaster

This is a category for services owned and operated by entities also owning and/or operating a FCC-licensed AM or FM station, and is only for nonsubscription transmissions. Broadcasters may operate separate subscription-based services under the default Commercial Webcaster (CRB) category. Full rates and terms are available at 37 CFR 380 Subpart B.

2014

[PDF](#) **2014 Memo**

[PDF](#) **Minimum Fee SOA**

[XLS](#) **Monthly SOA**

[XLS](#) **Report of Use**

2013

[PDF](#) **Minimum Fee SOA**

[XLS](#) **Monthly SOA**

[XLS](#) **Report of Use**

Licensee Relations:

If you have questions about music licensing and streaming please contact us at:

[202-559-0555](tel:202-559-0555)

email.us

- 1) Eligibility Requirements: Broadcasters
 1. Must have a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the FCC.
 2. Must not be a **"noncommercial"** service, and
 3. Must only create nonsubscription transmissions. (Broadcasters wanting to create subscription transmissions must operate separate **commercial webcaster (CRB)** services.
- 2) Minimum Fees and Minimum Fee SOA:
 1. **Amount:** \$500, per station or channel, not to exceed \$50,000 (if a service has more than 100 stations or channels). All payments must be accompanied by a signed and completed minimum fee Statement of

SoundExchange Required Filings

- Annual Minimum Fee and Statement of Account
- Monthly Statement of Account and Payment
- Monthly Report of Use
- Annual election if not paying under “default” statutory rate set by the CRB
 - Many special deals under Webcasters Settlement Act Agreements for various classes of commercial webcasters and noncommercial broadcasters and webcasters

Current Broadcaster Rates

- Annual Minimum Fee: **\$500** per station or channel, with a \$50K “cap” on annual minimum fees – applied to per performance fees below.
- A Performance is *one song played for one listener* – e.g. if you play a song and have 10 listeners at the time, you have 10 performances
- Need to set up a way of tracking performances – many service providers can help
- Monthly Rate: all amounts below are “per performance”:
 - 2014 - \$0.0023**
 - 2015 - \$0.0025

SoundExchange Reports of Use

- Census (all tracks streamed in the month)
- Actual Total Performances for each track (how many times track was streamed times the number of listeners)
- A small % may be reported using aggregate tuning hours instead of actual total performances (2014 = 10%, 2015 = 8%), assumes 12 songs per hour
- Due within 45 days after the end of each month, even if *no* liability is owed for that month

Special Deal for Small Broadcasters

- If total listenership to your stream is fewer than 27,777 aggregate tuning hours (“ATH”) per year (essentially an average of 3 simultaneous listeners), Broadcasters may annually elect to operate as **Small Broadcasters**.
- \$500 per station/channel annual minimum fee
 - **\$100 waiver fee per station/channel, which waives Report of Use requirement**

Other Streaming Rules

- These rules apply to broadcast stations with traditional broadcast formats
- Need to have website textual information giving song, artist and album information
- If you do special Internet-only channels, other issues arise
 - 1) You can't tell audience when a track will play in the future (they can't get their recorders ready...)
 - 2) Limitations on the number of songs performed from the same artist, album, or compilation in a given time period (the "sound recording performance complement")
 - No more than three tracks from the same album in a 3-hour period
 - No more than four tracks from the same artist in a 3-hour period

Policy Issues in Music Streaming

- New SoundExchange rates for 2016-2020 to be set by Copyright Royalty Board – proceeding has begun and will finish by December 2015
- Lots of debate about musical composition royalties – at Copyright Office, on Capitol Hill, at the Department of Justice, and (for SESAC) in Court
- RESPECT Act for pre-1972 sound recordings
- Recordkeeping proceeding at the CRB

Other Legal Issues to Consider in Connection with your Streaming

- International rights to music not covered by US licenses
- SAG-AFTRA issues with over-the-air commercials used online – resolved, for the most part
- Questions about political ads online
- Make sure that insurance coverage extends to online content
- Make sure that rights to over-the-air content extend to online uses

QUESTIONS?

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