



in cooperation with the
**Maryland D.C. Delaware
Broadcasters Association**



presents

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The Statutory License Applicable to Webcasting

Why?

What?

And, Most Important: How?

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Rights of a Copyright Owner

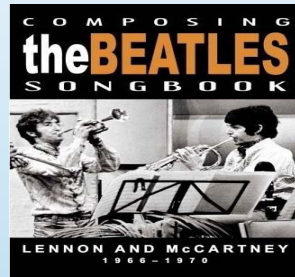
- **Reproduce** the copyrighted work
- Prepare **derivative** works
- **Distribute** by sale, transfer, rental, lease, or lending
- **Display** the work
- **Perform** the work in public

Extent of Ownership Rights

- A copyright owner has a limited monopoly to engage in these five activities
- Unless you are the copyright owner, you cannot use a currently copyrighted work or anything substantially similar to the work unless:
 - You get permission right to use the work via purchase or license
 - You are engaged in a “fair use”
 - Another defense exists

Dual Music Rights in Every Song: “Yesterday”

Musical Work



or Publishing Company

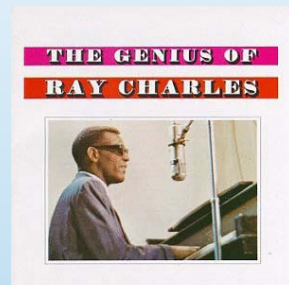


ASCAP/BMI/SESAC

(includes Internet performance)

Dual Music Rights in Every Song: “Yesterday”

Sound Recording



or Record Label



SoundExchange

(not required for over-the-air)

	Over the Air Broadcast	Internet Webcast
Musical Work (underlying music and lyrics)	ASCAP/BMI/SESAC	ASCAP/BMI/SESAC
Sound Recording (particular rendition of a song)	None	SoundExchange

soundexchange 1121 FOURTEENTH STREET, NW, SUITE 700 WASHINGTON, DC 20005
P 202 640 5858 F 202 640 5859
WWW.SOUNDEXCHANGE.COM



January 28, 2010

VIA E-mail & Certified Mail, Return Receipt Requested

██████████
President
██████████
██████████
██████████
██████████

Re: Notice of Potential Violation of Terms of Statutory License
██████████

Dear ██████████

As you may know, SoundExchange, Inc. is the non-profit entity designated by the Copyright Royalty Board to collect royalties owed under the statutory license for the public performance of sound recordings via certain noninteractive digital audio transmissions (e.g., "webcasting") and the making of certain ephemeral phonorecords. See 17 U.S.C. §§ 112(e), 114; 37 C.F.R. Parts 370, 380 (the "Statutory License"). SoundExchange, in turn, distributes the royalties it collects to the performing artists and copyright owners of such sound recordings.

We are aware that you filed a Notice of Use of Sound Recordings Under Statutory License with the United States Copyright Office on January 23, 2008 for your webcasting services a ██████████ very service that relies on the Statutory License is required to provide to SoundExchange at least the following: (1) an annual minimum fee, accompanied by the appropriate statement of account; (2) monthly usage payments, also accompanied by the appropriate statement of account; and (3) reports of use reporting the sound recordings performed by the service. As of this date, SoundExchange has not received any of the foregoing from ██████████ for the webcasting service at ██████████

Under the U.S. Copyright Act, a service that transmits webcasts of copyrighted sound recordings over the Internet to users in the United States must either comply with the Statutory License or have direct licenses from the sound recording copyright owners to perform any content transmitted on the service. If ██████████ is not relying on the Statutory License – for example, because it has a direct license to the pertinent sound recordings – then please let us know so that we may update our records and inform our constituents accordingly.

However, if ██████████ is relying on the Statutory License, please let us know whether it is doing so under a different corporate name or whether it is relying on a third party to make payments under the Statutory License to SoundExchange. If not, then

January 28, 2010

Page 2 of 2

_____ is operating in violation of the terms of the Statutory License, because it has failed to provide SoundExchange with the annual minimum fee, monthly usage payments, statements of account and reports of use. A service that intends to operate under the Statutory License but fails to adhere to these requirements may be liable for copyright infringement. The damages for copyright infringement can be severe. For example, the service may be liable for damages of up to \$150,000 per incident of infringement, see 17 U.S.C. § 504(e)(2), and each instance in which a sound recording is transmitted through the site and accessible in the United States may be considered a separate incident of infringement. To comply with the Statutory License, a service must (among other things) submit timely payments, statements of account, and reports of use and conduct its streaming activity in compliance with the statutory conditions on eligibility (see 17 U.S.C. §§ 112(e); 114(d)(2)(C)). Please be advised that every service must calculate its own amounts due and submit the necessary payments and reports. SoundExchange does not send invoices to services for their monthly or annual amounts due.

To that end, please calculate the amount due from your service for all webcasts of copyrighted sound recordings made over the Internet to users in the United States since commencement of the service. You may use the rates and other information provided on SoundExchange's web site at www.soundexchange.com to determine the amount due to SoundExchange. Please remit payment, statements of account and reports of use to SoundExchange as soon as possible, and no later than February 22, 2010.

Finally, 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 thus a matter of law. Accordingly, SoundExchange's acceptance of notices of use, payments, statements of account, or reports of use does not express or imply any acknowledgment that a service is in fact eligible for or otherwise in compliance with the requirements of the Statutory License. If you have questions about whether your service is eligible for the Statutory License, you should consult your own legal counsel for advice.

This letter 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.

If you have any questions, please review our web site at www.soundexchange.com or feel free to contact our licensing and enforcement department at 202.640.5858.

Best regards,




Steps to Compliance

1. File with the United States Copyright Office
2. Comply with the “Sound Performance Complement”
3. Pay Royalties/File Required Playlists of Use

File Before Commencing Webcasting Operations



Notice of Use of Sound Recordings under Statutory License

United States Copyright Office

In accordance with 37 CFR 270.1, 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.

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

Check, if applicable:

- Amended filing

*Copyright Royalty Board
ATTN: Licensing Division
PO Box 70977
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 _____
NOTE: A post office box is acceptable if it is the only address that can be used in that geographic location.
- 3 Telephone no. _____
- 4 Fax no. _____
- 5 Website address of service *http://* _____
NOTE: Information must be provided on how to gain access to the online website or home page of the service, or where information may be posted under the regulations concerning the use of sound recordings.
- 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.

W-069—03/2006

Sound Performance Complement

(Required and Prohibited Information About Songs, Albums and Performers)

MUST:

Provide song title, album title, and name of the performer contemporaneously with song

DON'T:

Pre-announce upcoming songs or **allow any other interactivity**

(NOT OK): “Yesterday’ by The Beatles will be played at 5:23 pm, followed by two minutes of commercials and then ‘Born to Run’ by Bruce Springsteen at 5:30 pm”

(OK): “We’ll go to commercial and have some Beatles for you when we come back” or “Coming up, we go back to the archive for ‘Yesterday”

Sound Performance Complement

**(Required and Prohibited Information
About Songs, Albums and Performers)**

Song:

No more than 1x in an hour

Album:

No more than 3x in 3 hours

None of these back to back

Artist or Compilation:

No more than 4x in 3 hours

None of these back to back

Sound Performance Complement

Archived and Repeated Programs

Archiving:

Programs of less than 5 hours: no archiving

Programs of 5 hours or greater: can archive for up to 2 weeks

Repeating:

If repeated consecutively: must be at least 3 hours

If less than 1 hour: can only repeat 3x in a 2 week period

If 1 hour or more: can only repeat 4x in a 2 week period

Sound Performance Complement

Other Requirements

No:

**Contemporaneous transmission of visual images
with sound**

Bootlegs

Must:

**Agree to cooperate in preventing creation of
pirated CDs**

**Not interfere with the technical measures widely
used by sound recording owners to identify or
protect copyrighted works.**

Annual Filing Requirements

1. Election of Status (January 31)
2. Annual minimum Payment of \$ 500 per station (January 31)
3. Monthly Requirements (within 45 days of end of month)
 - a. Payment
 - b. Playlist reports of use

**By January 31:
\$500 per channel
(max. 100
channels)**

STATEMENT OF ACCOUNT FOR A BROADCASTER
(PURSUANT TO THE BROADCASTER SETTLEMENT ACT OF 2008)
2010 MINIMUM FEE



Send payments and statements to:
SoundExchange, Inc.
1121 Fourteenth St., N.W., Suite 700
Washington, DC 20005
Attn: Royalty Administration

1 Name of Service:	
2 URL:	
3 Station/Channel Name* (e.g., Station Call Letters) <small>*Reporting more than one, list all on Page 3</small>	

2010 ANNUAL MINIMUM FEE

Licensees must pay a \$500 annual minimum fee per station or channel, not to exceed \$50,000.00.
ALL payments must be accompanied by a Statement of Account.

4 Number of Stations/Channels Transmitting in 2010:	
5 2010 ANNUAL MINIMUM FEE Enter the lesser of (a) \$50,000 or (b) line 4 multiplied by \$500	0.00
6 Enter amounts previously paid for 2010 (for minimum fee ONLY)	
7 CURRENT MINIMUM FEE LIABILITY Enter line 6 subtracted from line 5	0.00

DUE DATE

For stations or channels that intend to operate in 2010, and were operating prior to January 31, 2010:
Licensees shall make minimum fee payments on or before **February 1, 2010**.

Page 1 of 4 (OFFICE USE ONLY - WSA - 2009-2010)

**Within 45 days of
the end of the
month:**

**Pay at applicable
per performance
rate**

**STATEMENT OF ACCOUNT FOR A BROADCASTER
(PURSUANT TO THE WEBCASTER SETTLEMENT ACT OF 2008)
2010 USAGE**



Send payments and statements to:
SoundExchange, Inc.
1121 Fourteenth St., N.W., Suite 700
Washington, DC 20005
Attn: Royalty Administration

Please refer to page 3 for instructions to filling out this form.

1 For the 2010 month of:	
2 Name of service:	
3 URL:	
4 Station/Channel Name* (e.g., Station Call Letters): <small>*If reporting more than one, list all on Page 3</small>	

MONTH	PERFORMANCES
5 January	
6 February	
7 March	
8 April	
9 May	
10 June	
11 July	
12 August	
13 September	
14 October	
15 November	
16 December	
17 Enter sum of lines 6 - 16 from above	0
18 Enter line 17 multiplied by \$0.0016	0.00

19 Enter the TOTAL number of Stations/Channels transmitting in the year 2010	
20 2010 MINIMUM FEE LIABILITY Enter the lesser of (a) \$50,000 or (b) line 19 multiplied by \$500	0.00
21 Enter the greater of (a) line 18 or (b) line 20	0.00
22 Enter amounts previously paid for 2010 liability <small>(including both monthly fee liability and minimum fee payments)</small>	
23 TOTAL CURRENT LIABILITY Enter line 22 subtracted from line 21	0.00



Per Performance Calculation (Definition)

A performance is any instance in which any portion of a sound recording is webcast to a listener excluding:

A performance of a sound recording that does not require a license
(you own the rights)

A performance of a sound recording for which a license has already been obtained directly from the copyright owner **(you've done the work)**

An incidental performance that makes no more than a brief use of the sound recording including brief musical interludes into and out of commercials, brief performances during sports, talk, or news programming and brief performances during commercials which are less than 60 seconds in duration, as well as ambient music in the background at a public event which does not feature a particular sound recording of more than 30 seconds **(it's just a bump)**

Per Performance Calculation (Practice)

1 Listener

x

1 Song

x

Applicable Royalty Rate



Per Performance Calculation (Practice)

10 Listeners

x

12 Songs in an hour

=

120 Performances

x

Applicable Royalty Rate of \$ 0.0017

=

24.48 cents per hour



Per Performance Calculation (Implementation)

100 Listeners

x

7200 Songs in month (12 per hour in a 20 hour day)

=

720,000 Performances

x

Applicable Royalty Rate of \$ 0.0017

=

\$ 1224.00 per month

Per Performance Calculation (Software)

Most webcasting software does this for you

BUT

Not all software calculates exact performances

**You may be counting by the day, the hour or by
average listenership, not by the song and, thus,
overinflating your numbers**

**Investing in good software may save money in the
long run, both in terms of royalty calculation AND:**

Playlist Report of Use

**To SoundExchange in ASCII format
via E-mail, FTP, CD-ROM:**

Name of the service making transmissions (including call letters if relevant)

Identification of the transmission category from one of eleven choices

Name of the featured artist

Sound recording title

International Standard Recording Code (“ISRC”) OR Album title + marketing label

Channel or program name

Actual total performances OR Aggregate Tuning Hours + Play Frequency + Date/Time

Sample Playlist Report of Use (each possible combination of information)

<i><u>Name of Service</u></i>	<i><u>Trans. Cat.</u></i>	<i><u>Feat. artist</u></i>	<i><u>Sound Rec. Title</u></i>	<i><u>ISRC</u></i>	<i><u>Album Title</u></i>	<i><u>Label</u></i>	<i><u>Channel Name</u></i>	<i><u>Actual Total Perf.</u></i>	<i><u>ATH</u></i>	<i><u>Play Freq.</u></i>	<i><u>Date /Time</u></i>
FHHWeb	C	Bruce Springsteen	Born to Run		Born to Run	Columbia	WFHH	200			
FHHWeb	C	Bruce Springsteen	Born to Run		Born to Run	Columbia	WFHH		20	4	5/23/2011
FHHWeb	C	Bruce Springsteen	Born to Run	USMR-001-75-00001			WFHH	200			
FHHWeb	C	Bruce Springsteen	Born to Run	USMR-001-75-00001			WFHH		20	4	5/23/2011



List of Entity Categories

List of Entities Covered

Noncommercial

Public Broadcasters

Pursuant to Webcasting Settlement
Agreement between CPB and
SoundExchange

Noncommercial Educational Webcasters

Pursuant to CRB 's Webcasting III
decision applicable to 2011-2015

Noncommercial Webcasters

Pursuant to Webcasting Settlement
Agreement between NRB and
SoundExchange

Noncommercial Webcasters

Pursuant to CRB's Webcasting III decision
applicable to 2011-2015

Commercial

Commercial Broadcasters

Without regard to the earlier
Webcasting Settlement
Agreement between NAB and
SoundExchange

Noncommercial v. Commercial Webcasters

A noncommercial webcaster:

is exempt from taxation under Section 501 of the Internal Revenue Code

has applied for status as an entity exempt from taxation under Section 501 of the Internal Revenue Code, or

is a government entity acting within its public purpose

Note that the definition of “noncommercial” for webcasting purposes has nothing to do with the FCC license.



Noncommercial Settlement Agreement for Public Broadcasting Stations

Eligibility

Qualify as a "noncommercial webcaster" under the statutory licensing rules

Webcast as part of the mission that entitles the owner to be exempt from taxation under Section 501 of the Internal Revenue Code, or, if it is owned by a government entity, operate for a public purpose.

Licensed by the Federal Communications Commission

Originate programming (not be solely a repeater station)

Be a member or affiliate of:

NPR

American Public Media

Public Radio International

Public Radio Exchange

National Federation of Community Broadcasters, or

Be a public radio station that is qualified to receive funding from CPB



Noncommercial Settlement Agreement for Public Broadcasting Stations (*continued*)

Payment and Playlist Filing

Stations are billed directly by NPR's Public Radio
Interactive and make playlist filings to that entity as well

Exists through 2015

Noncommercial Educational Webcasters

Eligibility

Any noncommercial webcaster who:

Is directly operated by, or affiliated with and officially sanctioned by, a domestically-accredited primary or secondary school, college, university or other post-secondary degree granting institution;

Staffs its webcasting operations substantially by students;

Did not exceed 159,140 ATH in any month during the preceding year.

*****Must opt in to “noncommercial educational webcaster” status by January 31 of each year or within 30 days of commencing webcasting*****



Noncommercial Educational Webcasters (*continued*)

Payment

\$500 annual minimum (by Jan. 31) plus:

Nothing more if you do not exceed 159,140 aggregate tuning hours in a given month

Payment at per performance rate of:

2011:	\$ 0.0017
2012:	\$ 0.0020
2013:	\$ 0.0022
2014:	\$ 0.0023
2015:	\$ 0.0025

Playlist Filing

< 55,000 ATH/MO = able to pay \$ 100 in lieu of filing

Between. \$ 55,000 ATH/MO and 159,140 ATH/MO = Two seven-day periods per quarter

> 159,140 ATH/MO = Monthly filing of all songs played during the month

**Aggregate Tuning Hour
Maximum Approximation
(Noncommercial Educational Microcaster
seeking Exemption from Playlist Report of Use Filing)**

$$\begin{array}{r} 55,000 \text{ Aggregate Tuning Hours Per Month} \\ \div \\ 744 \text{ hours in a 30 day month} \\ = \\ 73.92 \text{ listeners at any given time} \end{array}$$



General Noncommercial Settlement Agreement

Eligibility

Any noncommercial webcaster who elected into the agreement by January 31 of each year (or within 30 days of commencing webcasting) and does not, in any subsequent year, opt out

Must opt-in to “noncommercial microcaster” status by January 31 of each year or within 30 days of commencing webcasting



General Noncommercial Settlement Agreement (*continued*)

Payment

\$ 500 annual minimum (by Jan. 31) plus:

Nothing more if you do not exceed 159,140 aggregate tuning hours in a given month

Payment at per performance rate of:

2011:	\$ 0.00057
2012:	\$ 0.00067
2013:	\$ 0.00073
2014:	\$ 0.00077
2015:	\$ 0.00083

Playlist Filing

< 44,000 ATH/YR = able to pay \$ 100 in lieu of filing

Between \$ 44,000 ATH/YR and 159, 140 ATH/Month = Two seven day periods per quarter

> 159,140 ATH/Month = Monthly filing of all songs played during the month

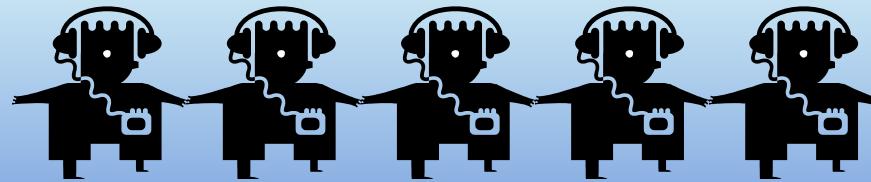
**Aggregate Tuning Hour
Maximum Approximation
(Noncommercial Microcaster seeking
exemption from playlist report of use filing)**

44,000 Aggregate Tuning Hours Per Year

÷

8760 hours in a year

=



5.02 listeners at any given time



**Noncommercial Webcasters
Under the Copyright Royalty Board's
Webcasting III decision covering 2011-2015
(not participating in a settlement agreement)**

Eligibility

Any non-interactive, noncommercial webcaster that is not part of a settlement agreement



Noncommercial Webcasters Under *Webcasting III*
(not participating in a settlement agreement) (*continued*)

Payment

\$ 500 annual minimum (by Jan. 31) plus:

Nothing more if you do not exceed 159,140 aggregate tuning hours in a given month

Payment at per performance rate of:

2011:	\$ 0.0019
2012:	\$ 0.0021
2013:	\$ 0.0021
2014:	\$ 0.0023
2015:	\$ 0.0023

Playlist Filing

Overall royalty obligation for the year \leq \$ 500 = Two seven-day periods per quarter

Overall royalty obligation for the year $>$ \$ 500 = Monthly filing of all songs played during the month



**Commercial Webcasters
Under the Copyright Royalty Board's
Webcasting III decision covering 2011-2015
(not participating in a settlement agreement)**

Eligibility

Any commercial webcaster who has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission

Must opt in to “small broadcaster” status by January 31 of each year or within 30 days of commencing webcasting



Commercial Webcasters Under *Webcasting III*
(not participating in a settlement agreement) (*continued*)

Payment

\$ 500 annual minimum (by Jan. 31) plus:

Payment at per performance rate of:

2011:	\$ 0.0017
2012:	\$ 0.0020
2013:	\$ 0.0022
2014:	\$ 0.0023
2015:	\$ 0.0025

Playlist Filing

< 27,777 ATH/YR = able to pay \$ 100 in lieu of filing

> 27,777 ATH/YR = Monthly filing of all songs played during the month

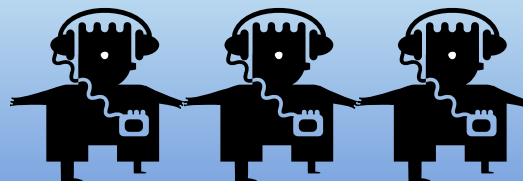
**Aggregate Tuning Hour
Maximum Approximation
(Small Broadcaster seeking Exemption
from Playlist Report of Use Filing)**

27,777 Aggregate Tuning Hours Per Year

÷

8760 hours in a year

=



3.17 listeners at any given time

Summary of Noncommercial Options

	<u>Eligibility</u>	<u>Payment</u>	<u>Playlist Filing</u>
CPB/ SoundExchange Settlement Agreement	Members of NPR APM PRI NFCB CPB	Deal directly with NPR's Public Radio Interactive	Deal directly with NPR's Public Radio Interactive
Noncommercial Educational	Any noncommercial webcaster who is affiliated with an educational institution and whose operations are substantially staffed by students	Annual minimum: \$ 500 Monthly Excess at PP Rate: 2011: \$ 0.0017 2012: \$ 0.0020 2013: \$ 0.0022 2014: \$ 0.0023 2015 \$ 0.0025	< 55,000 ATH/MO = \$ 100 proxy fee Bet. \$ 55,000 ATH/MO and 159,140 ATH/MO = Two seven day periods per quarter > 159,140 ATH/MO = Monthly filing of all songs played
General Noncommercial Settlement Agreement	Any noncommercial webcaster who opted in by 1/31 of each year or within 30 days of starting and doesn't opt out	Annual minimum: \$ 500 Monthly Excess at PP Rate: 2011: \$ 0.00057 2012: \$ 0.00067 2013: \$ 0.00073 2014: \$ 0.00077 2015 \$ 0.00083	< 44,000 ATH/YR = \$ 100 proxy fee Bet. \$ 44,000 ATH/YR and 159,140 ATH/MO = Two seven day periods per quarter > 159,140 ATH/Month = Monthly filing of all songs played
CRB Webcasting III decision	Any non-interactive noncommercial webcaster	Annual minimum: \$ 500 Monthly Excess at PP Rate: 2011: \$ 0.0019 2012: \$ 0.0021 2013: \$ 0.0021 2014: \$ 0.0023 2015: \$ 0.0023	<= \$ 500 in annual royalties = Two seven day periods per quarter > \$ 500 in annual royalties = Monthly filing of all songs played

Summary of Commercial Options

	<u>Eligibility</u>	<u>Payment</u>	<u>Playlist Filing</u>
All Commercial Broadcasters	<p>Any commercial webcaster who has a substantial business owning and operating one or more terrestrial AM or FM radio stations that are licensed as such by the Federal Communications Commission</p>	<p>Annual minimum: \$ 500</p> <p>Monthly Per Performance:</p> <p>2011: \$ 0.0017 2012: \$ 0.0020 2013: \$ 0.0022 2014: \$ 0.0023 2015 \$ 0.0025</p>	<p>Monthly list of all songs played</p> <p>\$ 100 proxy fee option for less than 27,777 ATH/YR</p>

Thank you.

Questions?

Presented by:

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