

## [Final Webcasting Royalty Rates Published - A Comparison of How Much Various Services Pay](#)

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Last week, the Copyright Office published in the Federal Register the [final decision of the Copyright Royalty Board](#) on the statutory rates for **Internet radio royalties** - royalties paid by webcasters for the **noninteractive streaming of sound recordings**. As we have [made clear before](#), these are royalties that are paid in addition to the royalties paid to ASCAP, BMI and SESAC for the public performance of the **musical compositions** (see our memo on *Using Music in Digital Media*, [here](#), that explains the difference between the sound recording and musical composition royalties). The rates adopted by the CRB are the rates to be paid by any webcaster who has not elected alternative rates available under one of the many settlement agreements between SoundExchange and groups of webcasters, which were entered into under the **Webcaster Settlement Acts**. The Final Decision corrects a few typos in the initial decision, but otherwise leaves the substantive holdings of the decision unchanged. We described those holdings [here](#). While the publication of the final decision starts the clock running on filing an appeal, the new rates are unchanged from those that were in effect for 2010 for commercial webcasters who had not elected any available alternative set of rates. Thus, these webcasters will continue to pay at the rate of \$.0019 per "performance" (a performance being one listener listening to one song - e.g. if there are 100 people listening to a stream that plays 10 songs in an hour - there are 1000 performances in that hour) for the remainder of 2011. The publication of these rates has, however, triggered a number of questions about the comparative royalties that different Internet radio services pay for streaming music on the Internet - rates summarized below.

As set out below in detail, there are significant differences in the royalties paid by different services for the 2011-2015 royalty period. **Broadcasters** who are streaming their programming on the Internet pay lower per performance royalties than webcasters paying the statutory rate in the first years of the 5 year period, but higher rates at the end of the period. (See a summary of the Broadcaster royalty agreement [here](#)). **"Pureplay"** webcasters, like **Pandora**, pay significantly lower per performance royalties than either broadcasters or those paying under the statutory rate, but are required **to pay a minimum fee of 25% of the gross revenue of their entire business** - ruling out these lower rates as an option for any service that has lines of business other than webcasting. (See a summary of the Pureplay deal [here](#)). The broadcaster deal and that which applies to the Pureplay webcasters were both arrived at pursuant to settlements reached under the two Webcaster Settlement Acts, passed in 2008 and 2009. These

allowed the groups covered by these agreements to negotiate with SoundExchange over the rates that would cover the industry for the digital noninteractive performances of sound recordings. The statutory rates were arrived at by a decision of the Copyright Royalty Judges after litigation which took place last year.

The differing royalty rates for these three groups of webcasters can be summarized as set forth below.

### **Broadcasters Per Performance Royalties**

- 2011 - \$.0017 per performance
- 2012 - \$.0020 per performance
- 2013 - \$.0022 per performance
- 2014 - \$.0023 per performance
- 2015 - \$.0025 per performance

### **Statutory Webcasting Per Performance Royalty Rates**

- 2011 - \$.0019 per performance
- 2012 - \$.0021 per performance
- 2013 - \$.0021 per performance
- 2014 - \$.0023 per performance
- 2015 - \$.0023 per performance

### **Pureplay Webcasters Per Performance Royalty Rates**

- 2011 - \$.00102 per performance
- 2012 - \$.00110 per performance
- 2013 - \$.00120 per performance
- 2014 - \$.00130 per performance
- 2015 - \$.00140 per performance

As set forth above, there are different aspects to each of these rates that bring different benefits and costs. Pureplay webcasters pay the higher of the per performance royalties set out above and 25% of their gross revenue for all business lines - hence the name "pureplay", as only businesses that do virtually nothing but webcasting can benefit from these rates. Broadcasters actually get an additional benefit from their rates that is not available to other webcasters - where they are simulcasting their on-air signals, they need not abide by the Performance Complement - which limits the number of songs from the same artist that other webcasters can play within specified periods (see the details on this waiver [here](#)).

What do these rates mean? On a cost per thousand basis, services playing 10 songs an hour to 1000 listeners would be paying \$10.20 per hour under the Pureplay deal, \$17.00 an hour under the Broadcaster deal, and \$19.00 an hour under the rates set out in the CRB decision. By 2015, those rates would be \$14.00 under the Pureplay deal, \$25.00 per hour under the Broadcaster deal, and \$23.00 per hour under the CRB decision. Obviously, to pay for such royalties, broadcaster and statutory webcasters will either need to sell more commercials, or sell at a higher CPM than would a Pureplay webcaster.

There are other rates available under these and other deals to smaller entities who cannot afford the per performance royalties set out above (though there is always some question about whether the services that pay these per performance royalties can really afford them). For **small commercial webcasters** with less than \$1.25 million in annual revenue, they can pick a percentage of revenue royalty of [10-12% of gross revenues for services with less than 5 million aggregate tuning hours](#) per month, or [12-14% for those with more](#) monthly hours. **Noncommercial services** can pay at several different rates - including a royalty structure with limited reporting requirements and higher per performance fees if certain minimum listening levels are exceeded, or one with more reporting but lower royalties after the minimum levels are exceeded (see our comparison, [here](#)). **NPR stations** have [their own deal](#) - where streaming is paid for all affiliated stations by CPB.

It is a confusing royalty world - with services paying differing amounts for essentially the same service. These rates will be in place until the end of 2015. After that, who knows what rates will apply - as there will either be new negotiations for new rates, or another CRB proceeding to set rates for the industry.

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