

Copyright Royalty Board Starts Proceeding to Set Royalty Rates for Background Music Services - Reminder to Webcasters To Start Thinking of the Next Royalty Case

January 5, 2012 by [David Oxenford](#)

The Copyright Royalty Board has just announced that it is accepting petitions to participate in the next proceeding to set the royalty rates to be paid for the ephemeral copies made by "business establishment services" in connection with any digital transmission of sound recordings. Business establishment services are essentially background music services who provide music to businesses to be played in stores, restaurants, elevators, and other establishments. Under the Copyright laws, businesses are not required to pay a public performance royalty under Section 114 for the use of sound recordings (they do pay ASCAP, BMI and SESAC for the public performance of musical compositions). But the law (Section 112) does require that these services pay for the **ephemeral copies** made in the transmission (e.g. server copies). In the last proceeding, settled in 2008, SoundExchange and participating services reached an agreement to pay a fee of the greater of \$10,000 or 10% of revenues. Parties who want to participate in this new proceeding to possibly adjust this rate must file a petition with the Copyright Royalty Board, showing their interest in the proceeding, by February 2. The CRB will later this year announce a settlement window, hoping that the parties who file notices of intent to participate can work out a deal. If no deal is reached, direct cases will be due in the fall, and a hearing will be held next year, with the rates to be set before the current rates expire at the end of 2013.

This Notice reminds webcasters that all sound recording performance rates are temporary ones, that have to be readjusted every 5 years. Webcasters will be filing similar notices to participate in the next proceeding in January 2014, with new rates to be set before the end of 2015. We'll write soon about the issues that are likely to come up in that proceeding. But webcasters should be making their plans now to be ready to put on a good case as to why the current rates should be adjusted in the 2015 proceeding.

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