

## Webcasting Royalty Rates For 2003-2004 First Payment due April 14

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AM and FM broadcasters who stream their signals on the Internet now know the actual royalty rates that will apply to their activities.

The U.S. Copyright Office affirmed an industry-negotiated settlement for webcasting royalty rates for the 2003-2004 period. These amounts were negotiated by a select group of broadcasters, but the result is binding upon all broadcasters in the United States. The royalties cover the "public performance" rights (the actual provision of the song to the listener) and "ephemeral" rights (copies made to hard drives and other storage devices). **These fees are in addition to the separate royalties that must be paid to ASCAP, BMI and SESAC for the right to stream the underlying musical compositions.** (Webcasting fees, in turn, are separate from the ones already paid by broadcasters for over-the-air transmission of published music.)

Fees that cover your webcasting activities from January 1, 2003 through the end of February 2004 are **due on April 14**. Subsequent to that, monthly payments will be due 45 days after the end of each month (thus, payments for March will be due May 15, payments for April will be due June 14, etc.). SoundExchange has been designated by the Registrar of Copyrights to receive and distribute the licensee fees. You can access the payment forms and address information at <http://www.soundexchange.com>. This memorandum, and the chart below, outline the calculations by which broadcasters may determine the amounts due under the new public performance royalty rates. Further information about the mechanics of calculating the fees follows the chart.

Commercial broadcasters have the option of paying "per performance" (i.e., per song per listener) or per "Aggregate Tuning Hour" (per listener per hour). Most broadcasters will prefer the reduced record-keeping and generally lower rates of ATH. In addition, commercial broadcasters are subject to different royalty rates, depending upon station format.

Non-commercial stations pay lower rates per performance or ATH. A flat fee applies if the audience is small enough (under 146,000 ATHs a month). Minimum annual fees vary depending upon the nature of the noncommercial webcasters, and will slowly escalate over the next few years. However, most National Public Radio member stations and public stations that are qualified to receive funding from the Corporation for Public Broadcasting are already covered by a license agreement through December 2004.

Type of Webcasting	Terms for 2003-2004
Simulcast of a <b>commercial</b> radio broadcast	Stations <i>may</i> elect the "standard" royalty rate of 0.0762¢ per performance (but exempting 4% of such performances).

	<p>However, most stations, will elect to pay under the following schedule:</p> <ul style="list-style-type: none"> <li>• 0.0762¢ per ATH for news, talk, sports or business programming; or</li> <li>• 0.88¢ per ATH for music broadcasts.</li> </ul> <p>Stations electing either these performance or ATH rates are subject to an annual minimum of \$2,500 per licensee or \$500 per station, <i>whichever is less</i>.</p> <p><b>Small webcasters</b> (generally, those that have revenues of less than \$500,000 for 2003 and less than \$1,250,000 for 2004) may pay the greater of:</p> <ul style="list-style-type: none"> <li>• 10 percent of the first \$250,000 in gross revenues plus 12 percent of revenues after that; or</li> <li>• 7 percent of webcaster’s expenses during the period.</li> </ul>
<p>Simulcast of a <b>noncommercial</b> radio broadcast</p>	<p><b>For 2003</b>, a flat fee of:</p> <ul style="list-style-type: none"> <li>• \$300 if limited to news, talk or sports formats,</li> <li>• \$300 if qualified as a noncommercial educational station,</li> <li>• \$450 for all others.</li> </ul> <p><b>For 2004:</b></p> <ul style="list-style-type: none"> <li>• An annual fee of \$525 (or \$275 if format is news, sports and/or talk or if a school has less than 10,000 students).</li> <li>• Plus, for all usage above 146,000 ATH: (a) 0.02176¢ per performance or (b) 0.251¢ per ATH (0.02¢ per ATH for news, sports and/or talk.).</li> <li>• However, if you stream more than three channels, you must pay the commercial rates.</li> </ul>

### Calculating Amounts Due Per Performance

Royalties due are calculated by multiplying all but 4% of the number of performances (streaming a single song to a single listener) during the relevant period by the per performance royalty rate. Once that figure is totaled for each period, add an additional 8.8% for the Ephemeral License fee. For commercial broadcasters with adequate records, determine how many songs you have broadcast over the Internet and multiply 96% of that by the number of simultaneous streams that were used to provide that broadcast for the royalty period. Then multiply that figure by the 0.0762¢ Performance fee. Finally, add an additional 8.8% Ephemeral fee for the total fees due.

As an example, if your station was heard over various servers by 100 listeners, then the royalty fee would be 7.62 cents for each play of a track (less 4%). Assuming that you played 12 tracks an hour around the clock for a month, the total Performance royalty due for the month would be \$632.03 (100 listeners x 12 performances x 24 hours x 30 days x 0.96 x 0.0762¢). Adding the 8.8% Ephemeral fee (\$632.03 x 0.088 = \$55.61), the total due to SoundExchange for that month would be \$687.65.

### **Calculating Amounts Due Per Aggregate Tuning Hour**

ATH is defined as total hours of Internet transmissions times the number of simultaneous listeners. For example, if your music station simulcasts around the clock for a full month (30 days x 24 hours = 720 hours), and you had an average of 10 simultaneous listeners, you would have 7,200 ATH for the period. The 7,200 ATH should then be multiplied by the 0.88¢ ATH Public Performance royalty for a total of \$63.36. At that point, an additional 8.8% fee (63.36 x 0.088 = \$5.58) for the Ephemeral license is assessed, bringing the total due for the month to \$68.94.

### **Subscription Webcasting and Specific Situations**

The information above does not apply to stations that charge subscription fees for their streams. In those cases, additional percentage-of-revenue fees and alternative minimum fees are charged. If you have a subscription-based webcast, want help in determining the minimum fee that applies to your non-commercial station, or have any other questions about the fee structure, please call us.

Please note that this memorandum is intended to provide a simplified overview of the rules and calculations required for performance royalty fees. Please refer to the SoundStream website or contact us if you need full details or have any questions.

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