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Copyright Royalty Board Ruling

On October 2, 2008, following the joint motion proposal of the NMPA, SGA, NSAI, RIAA, and DiMA, the CRB established new royalty rates for certain types of reproduction uses of musical compositions. Most importantly, these established for the first time rates for interactive streaming and limited downloads. Beyond those uses, the CRB ruling also confirmed the physical mechanical and DPD rate as well as established a separate penny rate for ringtones (mastertones only).

Publishers also have the ability to charge a 1.5% late fee, calculated monthly, for every month that payment is not received, beginning from the first month payment is due.

For more information regarding the CRB ruling, see the Mechanical and Digital Phonorecord Delivery Rate Determination Proceeding (Docket No. 2006-3 CRB DPRA) (<http://www.loc.gov/crb/proceedings/2006-3/redacted-final-initial-determination.pdf>). The joint motion can be downloaded at http://www.rightsflow.com/Licensing_Resources/Interactive_Streaming_Limited_Downloads_Proposal.pdf

As a label, what does this mean to you?

If you are a label or distributor, you may be contractually required to handle the accounting and payment of mechanical and other royalties directly to publishers for US sales and uses, especially in the case of physical mechanicals, DPDs, and Ringtones. If your contracts with retailers and online music services state that you must handle all payments to third parties controlling the rights to compositions, then you will utilize the rates below when licensing, accounting, and making payments.

However, in the case of interactive streaming and limited downloads, it is more common for the online music service to have (in some cases) contractually assumed the responsibility to license, account, and pay publishers for those uses. By no means does this occur across the board, and you should double check every contract with every online music service to make sure you are clear on who has the responsibility to license, account, and pay to publishers for interactive streaming and limited downloads.

In the case that you do have this contractual responsibility, each service must provide you with a “per play royalty,” which is calculated using the steps detailed below. This royalty will vary from accounting period to accounting period. In calculating your quarterly royalties, you will multiply this per play royalty by the amount of plays each work received in that period, arriving at a per work royalty, which will then be paid to publishers as applicable.

Rate Detail

Physical Mechanicals remain at 9.1 cents for recordings 5 minutes or less; for recordings over 5 minutes, 1.75 cents for each minute or fraction thereof, rounded up.

Digital Phonorecord Deliveries (DPDs) also remain at 9.1 cents for recordings 5 minutes or less; for recordings over 5 minutes, 1.75 cents for each minute or fraction thereof, rounded up.



Ringtones (mastertones only, not including monophonic, polyphonic, or ringback tones) are set at a flat 24 cents.

Interactive Streaming And Limited Downloads: Note that the calculations below are a description of how a service will arrive at a “per play” royalty. In the case where a label has the contractual responsibility to license, account, and pay publishers, this per play royalty will then be reported back to the label, which will use it to calculate royalties for the period. Naturally, the label will not be able to perform these calculations as they require a comprehensive knowledge of the service's revenue, royalty expenses, subscribers, and play counts.

In general, the calculation starts with an All In Royalty For Service, defined through comparing a percent of total service revenue for the period against a floor (which varies depending on the service type). Amounts paid to PROs are deducted from the All In Royalty. A Payable Royalty Pool is then created by comparing the All In Royalty (adjusted for PRO deductions) against a different floor (which varies depending on the service type).

A per play royalty is then calculated by dividing the Payable Royalty Pool by the total number of plays. The royalty for each composition is then determined by multiplying the per play royalty by the total number of plays each composition has received during the period. After October 1, 2010, plays of recordings which are over 5 minutes in length will be adjusted so that 0.2 plays is added for each minute or fraction thereof over 5. Therefore, a recording that is 5 minutes and 25 seconds long will count as 1.2 plays; a recording that is 6 minutes and 1 second will count as 1.4 plays, etc.

Calculation Steps for Interactive Streaming and Limited Downloads

Description of steps the Service will follow to determine the Per Play Royalty

Step 1 - All In Royalty

The All In Royalty is the GREATER of 10.5% of total service revenue (8.5% for plays before 12/31/07) or the applicable floor below, according to the service type:

Standalone, non-portable subscriptions, streaming only	Standalone, non portable subscriptions, mixed streaming and limited download	Standalone portable subscriptions, mixed streaming and limited download	Bundled subscription services (where subscription music services are bundled with other products and not priced separately)	Free nonsubscription or ad supported services
Lesser of: \$0.50 per subscriber per month and Subminimum 2 below	Lesser of: \$0.50 per subscriber per month and Subminimum 1 below	Lesser of: \$0.80 per subscriber per month and Subminimum 1 below	Subminimum 1 below	Subminimum 2 below

Subminimum 1	Subminimum 2
<p>A percentage of the royalties expensed by the Service for sound recordings related to interactive streams or limited downloads, as follows:</p> <ul style="list-style-type: none"> ● Where the label has passed through the publishing rights to the Service: <ul style="list-style-type: none"> ○ After 12/31/07: 17.36% of the royalties 	<p>A percentage of the royalties expensed by the Service for sound recordings related to interactive streams or limited downloads, as follows:</p> <ul style="list-style-type: none"> ● Where the label has passed through the publishing rights to the Service: <ul style="list-style-type: none"> ○ After 12/31/07: 18% of the royalties



<ul style="list-style-type: none"> ○ expensed by the Service ○ Before 12/31/07: 14.53% of the royalties expensed by the Service ● Where the label has NOT passed through the publishing rights to the Service: <ul style="list-style-type: none"> ○ After 12/31/07: 21% of the royalties expensed by the Service ○ Before 12/31/07: 17% of the royalties expensed by the Service 	<ul style="list-style-type: none"> ○ expensed by the Service ○ Before 12/31/07: 14.53% of the royalties expensed by the Service ● Where the label has NOT passed through the publishing rights to the Service: <ul style="list-style-type: none"> ○ After 12/31/07: 22% of the royalties expensed by the Service ○ Before 12/31/07: 17% of the royalties expensed by the Service
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Step 2 – Adjusted All In Royalty

Subtract PRO royalties paid in connection with interactive streaming and conditional downloads from the All In Royalty to arrive at an Adjusted All In Royalty.

Step 3 – Payable Royalty Pool

The Payable Royalty Pool is the GREATER of the Adjusted All In Royalty and the per subscriber floor as applicable to the Service type:

Standalone, non-portable subscriptions, streaming only	Standalone, non-portable subscriptions, mixed streaming and conditional download	Standalone portable subscriptions, mixed streaming and conditional download	Bundled subscription services (where subscription music services are bundled with other products and not priced separately)	Free nonsubscription or ad supported services
\$0.15 per subscriber per month	\$0.30 per subscriber per month	\$0.50 per subscriber per month	\$0.25 per subscriber per month	(no per subscriber floor)

Step 4 – Define a Per Play Rate and Calculate Per Work Royalties

Divide the Payable Royalty Pool by the total number of plays to calculate a Per Play Royalty. Multiply the Per Play Royalty by the total number of plays received by each work during the period to determine a Per Work Royalty. After October 1, 2010, plays of recordings which are over 5 minutes in length will be adjusted so that 0.2 plays is added for each minute or fraction thereof over 5. Therefore, a recording that is 5 minutes and 25 seconds long will count as 1.2 plays; a recording that is 6 minutes and 1 second will count as 1.4 plays, etc.

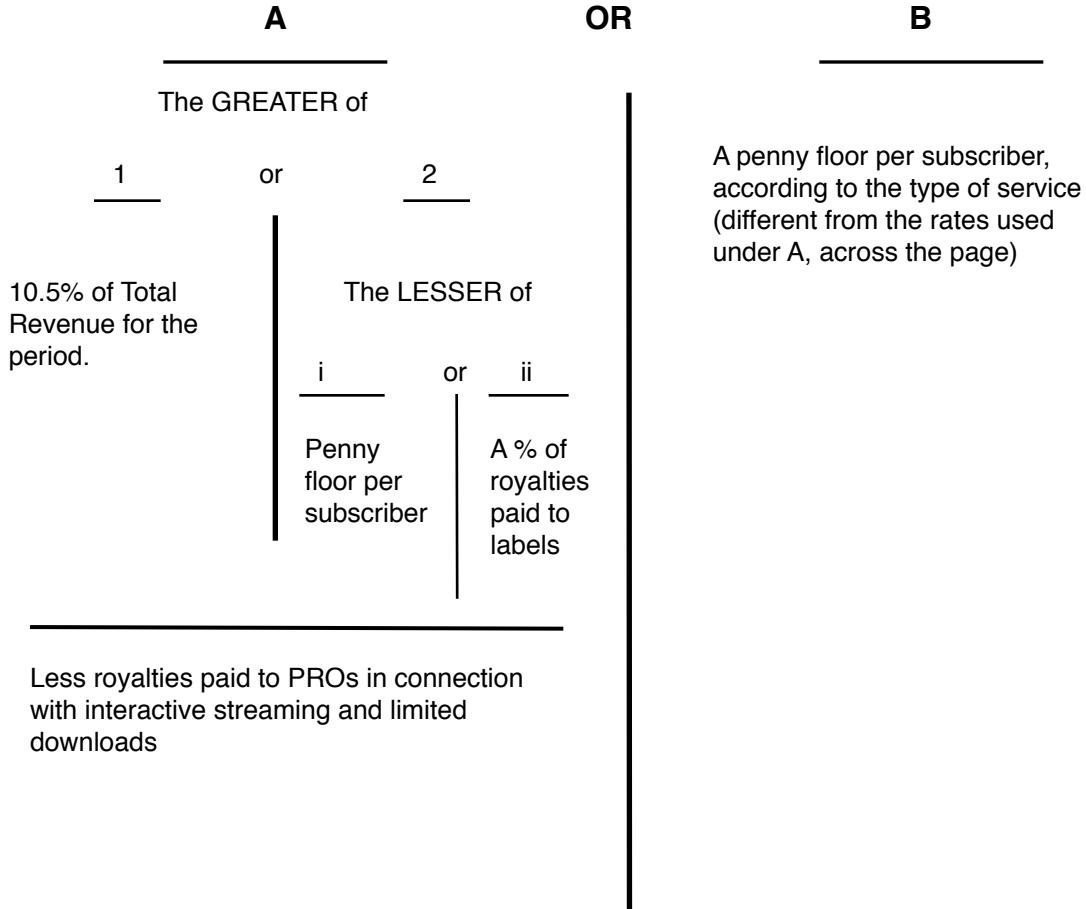
Step 5 – Accounting to Publishers (When Label Is Responsible)

In the case where the label is contractually responsible for accounting and payments to publishers, the Service delivers the Per Play Royalty along with transparent calculations describing how the Per Play Royalty was determined. The label calculates a Per Work Royalty as described in Step 4 above, and prepares accounting statements and royalty payments for publishers.



Interactive Streaming and Limited Downloads

1) The Payable Royalty Pool = The GREATER of



2) The Per Play Royalty

$$\frac{\text{The Payable Royalty Pool}}{\text{Total Number of Plays in the Period}} = \text{Per Play Royalty}$$

3) The Per Work Royalty

$$\text{Per Play Royalty} \times \text{Total Number of Plays Per Work} = \text{Per Work Royalty}$$

Assumptions For Royalty Calculation Illustration

The following section illustrates a royalty calculation scenario, following the methods described in the preceding section, under a set of assumptions as follows:

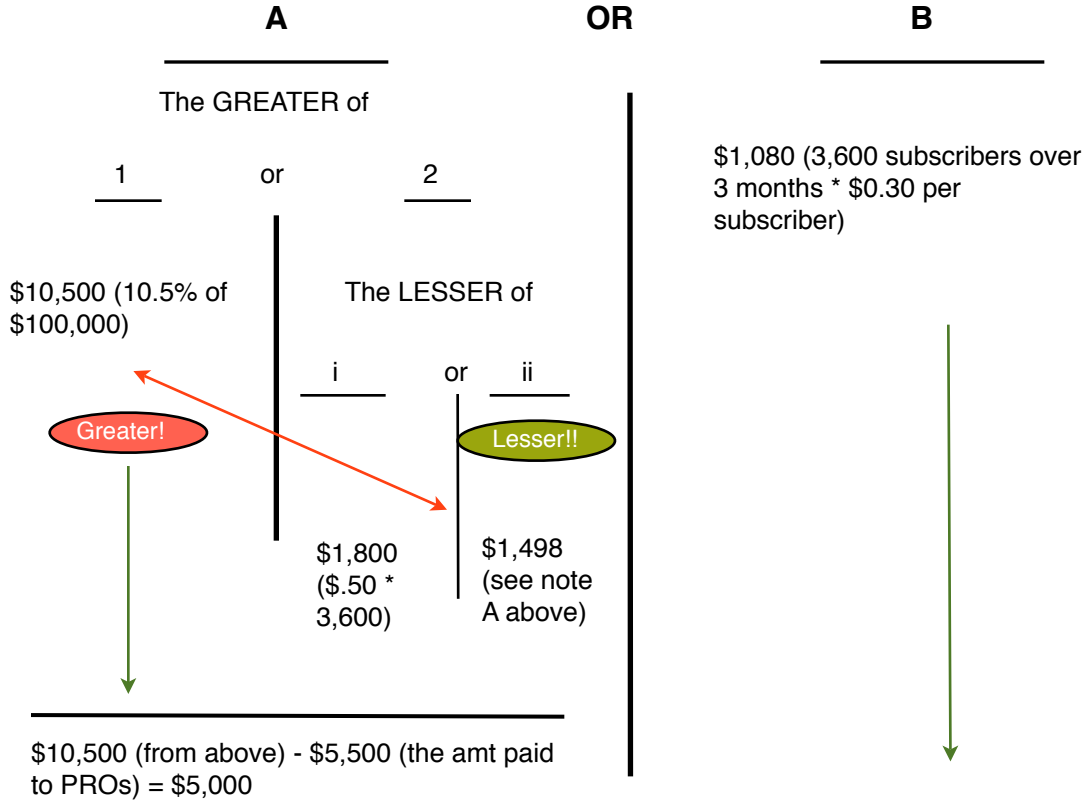
- Service type: Standalone, non portable subscriptions, mixed streaming and limited download
- Service period: Q3 2008
- Total revenue for the period: \$100,000
- Total subscribers:
 - July 2008: 1,000
 - August 2008: 1,200
 - September 2008: 1,400
 - Total subscribers during 3 months: 3,600
 - Penny floor is \$0.50 per subscriber per month
- Royalties paid to record labels:
 - Paid to labels who granted the rights of the compositions along with the rights of master recordings: \$5,000
 - Paid to labels who only granted the rights of the master recording, and require the service to obtain the composition rights: \$3,000
- Aggregate amount paid to ASCAP, BMI, and SESAC for the period: \$5,500
- The total number of plays during the period: 500,000

Calculation notes for use in the following section:

- A) Percentages of royalties paid to record labels (aka "Subminimum 1")
 - Labels who have passed through publishing rights: $\$5000 * 17.36\% = \868
 - Labels who have not passed through publishing rights: $\$3000 * 21\% = \630
 - Total amount for use in calculation steps: \$1,498

Sample Royalty Breakdown (Using assumptions stated in the prior section)

1) The Payable Royalty Pool = The GREATER of



The Payable Royalty Pool = \$5,000 (\$5,000 is greater than \$1,080)

2) The Per Play Royalty

$$\frac{\$5,000 \text{ (Payable Royalty Pool)}}{500,000 \text{ (Total Number of Plays in the Period)}} = \$0.01 \text{ (Per Play Royalty)}$$

3) The Per Work Royalty

$$\$0.01 \text{ (Per Play Royalty)} \times \text{Total Number of Plays Per Work} = \text{Per Work Royalty}$$