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TO: All Noncommercial Educational Webcasters

FROM: SoundExchange, Inc.

DATE: October 29, 2020

SUBJECT: **REMINDER** - 2021 Payment and Reporting Requirements under the Section 112 & 114 Statutory Licenses

This memorandum contains information for a Noncommercial Educational Webcaster that is currently relying on the statutory licenses set forth in Sections 112 and 114 of the U.S. Copyright Act (the “statutory license”) and has previously submitted payments to SoundExchange. We are writing to remind you about the obligations for Noncommercial Educational Webcasters for 2021.

While much of the information related to rates and terms will be the same in 2021 as it is in 2020, there is at least one important change: **the 2021 annual minimum fee is \$550 per station or channel**, with an optional \$100 reporting waiver per licensee. This is a small increase from last year’s rate of \$500 per station or channel. **We encourage services to log into [SoundExchange Licensee Direct](#) beginning December 1 to confirm/calculate, certify and pay for their 2021 minimum fees, which are due on or before February 1, 2021 for all services streaming in January 2021.** (Please read this complete memo for more information.)

Part I briefly summarizes the Noncommercial Educational Webcaster rates and terms in 2021. The best sources of information are the rates and terms themselves, however, and you should study them closely when determining how to proceed for 2021. We also always encourage you to seek independent legal advice if you have questions regarding your operation under statutory licensing that are not answered within this memo or on our website.

Part II briefly discusses the scope of the statutory license that SoundExchange administers.

Part III briefly provides reminders about our procedures.

Please use **SoundExchange Licensee Direct** for *all* royalty submissions, including Reports of Use: <http://licenseedirect.soundexchange.com>. Information described in this memo can also be found on the SoundExchange website at www.soundexchange.com.



I. Rates and Terms for Noncommercial Educational Webcasters

IMPORTANT: Please remember that SoundExchange **does not invoice services**. Each service is obligated to submit payments, Statements of Account, and Reports of Use (if applicable) regularly and in accordance with applicable rates and terms for the statutory license.

As a reminder, to be eligible for noncommercial webcasting rates and terms, a service must have received (or applied for) tax-exempt status under section 501 of the Internal Revenue Code, or must be operated by a governmental entity for public purposes. **If you have questions as to your eligibility for any of the below categories, or for noncommercial status in general (e.g., if you are a CPB-qualified entity), please seek legal advice.**

Noncommercial Educational Webcasters: The Noncommercial Educational Webcaster rates and terms are set forth in 37 CFR Part 380. Noncommercial Educational Webcasters are student-run noncommercial webcasters owned or sanctioned by domestically accredited educational institutions. They are also non-subscription services, and must not be a “CPB qualified” service (i.e., qualified to receive funding from the Corporation for Public Broadcasting).

1. **Minimum Fee Payment and Statement of Account:** Services that operate as Noncommercial Educational Webcasters must pay a \$550 recoupable, non-refundable minimum fee per channel or station by February 1, 2021 (accompanied by a signed and completed Statement of Account form, either mailed/emailed or calculated and certified online using **SoundExchange Licensee Direct**). This annual fee covers the first 159,140 aggregate tuning hours (“ATH”) per month.
2. **If ATH threshold is exceeded:** Services exceeding the 159,140 ATH monthly threshold more than once in a single year are no longer eligible for the Noncommercial Educational Webcaster category, and must restate/resubmit their calendar year activity as a Noncommercial Webcaster (CRB). If this condition appears to be applicable to your service, please contact us at your earliest convenience.
3. **Reports of Use:**
 - a. Eligible Noncommercial Educational Webcasters that did not exceed 80,000 ATH in any month for any individual channel or station more than once in 2020, and do not expect to exceed 80,000 ATH in any month in 2021, can elect reporting relief and pay an additional \$100 reporting waiver fee in lieu of providing Reports of Use. **NOTE:** Election (and payment) for the reporting waiver must be submitted with the minimum fee, on or before **February 1, 2021**.
 - b. Services that exceed 80,000 ATH in a given month more than once, but do not exceed 159,140 ATH in a given month more than once, can provide sample-

based Reports of Use (i.e., two weeks of reporting per calendar quarter). Services eligible for the reporting waiver described in (c)(i) above may also choose to provide sample-based Reports of Use and forgo the \$100 reporting waiver fee. Sample-based reports by Noncommercial Educational Webcasters do not require actual total performances or ATH, but the use of actual total performances or ATH is encouraged. These four quarterly Reports of Use for 2021 are due no later than January 31, 2021.

- c. Services that exceed 159,140 ATH in a month more than once in a calendar year must resubmit their Reports of Use as a Noncommercial Webcaster (CRB), and should contact us immediately for additional assistance.
- 4. 2021-2025 Rates and Terms.** As you may know, for more than a decade the rates and terms for Noncommercial Educational Webcasters have largely been the product of negotiated settlements between SoundExchange and College Broadcasters, Inc. This process is encouraged by the CRB, as it not only saves time and legal fees, but increases the success of the partnership between those who use music and those who create it. Once again, we have forwarded to the Copyright Royalty Board another negotiated settlement, this time regarding proposed rates and terms for 2021-2025. If approved (as expected), one of the significant changes to the current rates and terms will be the first increase of the minimum fee for educational webcasters since 2006: a \$50 increase, annually, beginning at \$550 in 2021 and ending at \$750 in 2025. More information about this needed change to the rates will come in greater detail upon formal approval by the CRB, but we felt it important to inform Noncommercial Educational Webcasters now, in order to allow as much time for appropriate planning and budgeting as possible. Please visit Licensee Direct for more information in the coming months.

II. The Statutory License

As a reminder to services of what the statutory license administered by SoundExchange covers, the statutory license is for the **public performance** of **sound recordings** by means of certain **eligible non-interactive digital audio transmissions**.

Musical works licensing: If you are webcasting, you almost certainly need to obtain a public performance license for the *musical works* (i.e. the underlying notes and lyrics) as well as for the sound recordings. SoundExchange does not administer licenses relating to the public performance of musical works. You should contact ASCAP, BMI, SESAC and Global Music Rights, as appropriate, for those rights.

Interactive streaming and downloads: In addition, the statutory license administered by SoundExchange does not cover interactive streaming or downloads of any kind, including downloadable “podcasts” of archived programming. **If you are offering podcasts that include sound recordings, then you may need to obtain a direct license**



from the relevant copyright owners. SoundExchange does not administer licenses for podcasting.

As always, if you have any questions about whether your activities are within the scope of the statutory license, you must contact your own legal counsel.

III. Procedural Changes and/or Reminders

A. SoundExchange ISRC Search: Use of International Standard Recording Codes (ISRCs) is the preferred way for licensees to identify sound recordings within Reports of Use. (Services not using ISRCs must provide both album name and marketing label to identify sound recordings within Reports of Use.) SoundExchange ISRC Search is a *free* option for licensees and others to search for (and download) ISRCs from our renowned repertoire database. Please visit <http://isrc.soundexchange.com> today to look up ISRCs for any recordings. We also offer an API for services to develop integrated access to this site. Please contact RepMatchService@soundexchange.com for more information.

B. Repertoire Match Service: SoundExchange also offers a *free* matching service to our vast repertoire database. You can upload a file containing all tracks in your catalog through Licensee Direct. We'll match them to ISRCs provided by the rights owners themselves, and return the file so you can update your entire catalog at once. Please visit [SoundExchange Licensee Direct](#) for more information.

C. ROU Augmentation: While most Noncommercial Educational Webcasters are eligible to elect the optional reporting waiver, some services regularly submit Reports of Use (ROUs). By logging into [SoundExchange Licensee Direct](#), these services may access versions of their submitted ROUs that we have augmented (where possible) with ISRCs, populated from our vast repertoire database. In addition, we highlight which parts of your submissions were potentially missing required information. We encourage you to regularly download these augmented files, in order to populate your own databases with this important identification field for sound recordings, so that your future submissions can include them, improving the efficiency for the entire royalty distribution process.

D. Delivery Address for Payments and Minimum Fee Statements of Account: Almost all Noncommercial Educational Webcasters should be able to use SoundExchange Licensee Direct to calculate, certify and pay for royalties online, including the renewal of their minimum fee. New services should submit their Minimum Fee Statement of Account online, and once we have received and processed it, we will email you an invitation to create your account within Licensee Direct. If you are not able to submit your Minimum Fee Statement of Account using Licensee Direct, please contact us at licenseerelations@soundexchange.com.



Physical delivery of payments should be accompanied a printout of the Statement of Account in Licensee Direct, and sent to us in one of these two ways below:

Standard USPS Mail
SoundExchange, Inc.
P.O. Box 75202
Baltimore, MD 21275-5202

Overnight Delivery / Courier Service
Lockbox Services 75202
Wells Fargo Bank
7175 Columbia Gateway Drive
Attn: SoundExchange, Inc., Lockbox 75202
Columbia, MD 21046
Tel.: 1-800-289-3557

All payments should be made payable to “**SoundExchange**” or “**SoundExchange, Inc.**”

Any and all *other* correspondence may be sent to the attention of Licensee Relations at SoundExchange, 733 10th Street NW, 10th Floor, Washington, DC 20001 or emailed to licenseerelations@soundexchange.com. **Please do *not* send payments/forms to our DC address, unless instructed to do so by a Licensee Relations team member.**

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This memorandum 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. 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 a matter of law. Accordingly, SoundExchange’s acceptance of any payments, Statements of Account, Reports of Use, or anything else, does not express or imply any acknowledgment that a service is or has been eligible to make use of the statutory license or that a service is otherwise in compliance with the statutory license. SoundExchange, as well as the performers and copyright owners on whose behalf SoundExchange collects royalties expressly reserve their rights and all other claims for relief.

Please understand that we are not providing you with legal advice about rights or royalties under the Copyright Act or regulations promulgated pursuant thereto. Furthermore, any communications between you and SoundExchange shall not create an attorney-client relationship and the information herein is not subject to any attorney-client confidentiality privileges. You should consult with your own legal counsel before taking any actions based upon statements made in this memorandum.

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If you have any difficulty accessing the forms from the website, or have any questions about the above information, please do not hesitate to contact our Licensee Relations team at 202-559-0555 or email us at licenseerelations@soundexchange.com. Additionally, if you believe this memorandum has reached you in error or you wish future correspondence from SoundExchange to be directed to another individual and/or address, please contact us via the above e-mail address.