

MBUS 4300

LECTURE 26 STREAMING MECHANICAL AND
COPYRIGHT REVISITED

TABLE 1 TO PARAGRAPH (b)(1)

Royalty year:	2023	2024	2025	2026	2027
Percent of Service Provider Revenue	15.1	15.2	15.25	15.3	15.35


TABLE 2 TO PARAGRAPH (b)(1)

Type of offering	TCC prong calculation
<i>Standalone Non-Portable Subscription Offering—Streaming Only</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
<i>Standalone Non-Portable Subscription Offering—Mixed</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
<i>Standalone Portable Subscription Offering</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of \$1.10 per subscriber for the Accounting Period.
<i>Free nonsubscription/ad-supported services free of any charge to the End User.</i>	26.2% of TCC for the Accounting Period.
<i>Bundled Subscription Offering</i>	24.5% of TCC for the Accounting Period.
<i>Mixed Service Bundle</i>	26.2% of TCC for the Accounting Period.
<i>Purchased Content Locker Service</i>	26.2% of TCC for the Accounting Period.
<i>Standalone Limited Offering</i>	26.2% of TCC for the Accounting Period.
<i>Paid Locker Service</i>	26.2% of TCC for the Accounting Period.

⦿ **§ 385.21 Royalty rates and calculations.**

- (a) **Applicable royalty.** Licensees that engage in Licensed Activity covered by this subpart pursuant to [17 U.S.C. 115](#) shall pay royalties therefor that are calculated as provided in this section.
- (b) **Rate calculation.** Royalty payments for Licensed Activity in this subpart shall be calculated as provided in this [paragraph \(b\)](#). If a Service Provider makes available different Offerings, royalties must be calculated separately with respect to each Offering taking into consideration Service Provider Revenue, TCC, subscribers, Plays, expenses, and Performance Royalties associated with each Offering. A Service Provider shall not be required to subject the same portion of Service Provider Revenue, TCC, subscribers, Plays, expenses, or Performance Royalties to the calculation of royalties for more than one Offering in an Accounting Period.
 - (1) **Step 1: Calculate the all-in royalty for the Offering.** For each Accounting Period, the all-in royalty for each Offering in this subpart with the exception of Mixed Service Bundles shall be the greater of:
 - (i) The applicable percent of Service Provider Revenue, as set forth in Table 1 to this [paragraph \(b\)\(1\)](#), and
 - (ii) The result of the TCC Prong Calculation for the respective type of Offering as set forth in Table 2 to this [paragraph \(b\)\(1\)](#). For Mixed Service Bundles, the all-in royalty shall be the result of the TCC Prong Calculation as set forth in Table 2.

TABLE 1 TO PARAGRAPH (b)(1)

Expand
Table


Royalty year:	2023	2024	2025	2026	2027
Percent of Service Provider Revenue	15.1	15.2	15.25	15.3	15.35


Expand
Table


TABLE 2 TO PARAGRAPH (b)(1)

Type of offering	TCC prong calculation
<i>Standalone Non-Portable Subscription Offering—Streaming Only</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
<i>Standalone Non-Portable Subscription Offering—Mixed</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of 60 cents per subscriber for the Accounting Period.
<i>Standalone Portable Subscription Offering</i>	The lesser of (i) 26.2% of TCC for the Accounting Period or (ii) the aggregate amount of \$1.10 per subscriber for the Accounting Period.
<i>Free nonsubscription/ad-supported services free of any charge to the End User</i>	26.2% of TCC for the Accounting Period.
<i>Bundled Subscription Offering</i>	24.5% of TCC for the Accounting Period.
<i>Mixed Service Bundle</i>	26.2% of TCC for the Accounting Period.
<i>Purchased Content Locker Service</i>	26.2% of TCC for the Accounting Period.
<i>Standalone Limited Offering</i>	26.2% of TCC for the Accounting Period.
<i>Paid Locker Service</i>	26.2% of TCC for the Accounting Period.

(2) **Step 2: Subtract applicable Performance Royalties.** From the amount determined in step 1 in [paragraph \(b\)\(1\)](#) of this section, for each Offering of the Service Provider, subtract the total amount of Performance Royalties that the Service Provider has expensed or will expense pursuant to public performance licenses in connection with uses of musical works through that Offering during the Accounting Period that constitute Licensed Activity. Although this amount may be the total of the Service Provider's payments for that Offering for the Accounting Period, it will be less than the total of the performance royalties if the Service Provider is also engaging in public performance of musical works that does not constitute Licensed Activity. In the case in which the Service Provider is also engaging in the public performance of musical works that does not constitute Licensed Activity, the amount to be subtracted for Performance Royalties shall be the amount allocable to Licensed Activity uses through the relevant Offering as determined in relation to all uses of musical works for which the Service Provider pays performance royalties for the Accounting Period. The Service Provider shall make this allocation on the basis of Plays of musical works, provided that if the Service Provider is not capable of tracking Play information, including because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings, and further provided that, if the Service Provider is also not capable of utilizing a manner consistent with a methodology used for making royalty payment allocations for the use of individual sound recordings, the Service Provider may use an alternative, good faith methodology that is reasonable, identifiable, and implemented consistently.

(3) **Step 3: Determine the payable royalty pool.** The payable royalty pool is the amount payable for the reproduction and distribution of all musical works used by the Service Provider by virtue of its Licensed Activity for a particular Offering during the Accounting Period. This amount is the greater of:

- (i) The result determined in step 2 in [paragraph \(b\)\(2\)](#) of this section; and
- (ii) The royalty floor (if any) resulting from the calculations described in [paragraph \(d\)](#) of this section.

(4) **Step 4: Calculate the per-work royalty allocation.** This is the amount payable for the reproduction and distribution of each musical work used by the Service Provider by virtue of its Licensed Activity through a particular Offering during the Accounting Period. To determine this amount, the result determined in step 3 in [paragraph \(b\)\(3\)](#) of this section must be allocated to each musical work used through the Offering. The allocation shall be accomplished by the Mechanical Licensing Collective by dividing the payable royalty pool determined in step 3 for the Offering by the total number of Plays of all musical works through the Offering during the Accounting Period (other than Plays subject to [subpart D of this part](#)) to yield a per-Play allocation, and multiplying that result by the number of Plays of each musical work (other than Plays subject to [subpart D of this part](#)) through the Offering during the Accounting Period. For purposes of determining the per-work royalty allocation in all calculations under step 4 in this [paragraph \(b\)\(4\)](#) only (*i.e.*, after the payable royalty pool has been determined), for sound recordings of musical works with a playing time of over 5 minutes, each Play shall be counted as provided in [paragraph \(c\)](#) of this section. Notwithstanding the foregoing, if the Service Provider is not capable of tracking Play information because of bona fide limitations of the available technology for Offerings of that nature or of devices useable with the Offering, the per-work royalty allocation may instead be accomplished in a manner consistent with the methodology used for making royalty payment allocations for the use of individual sound recordings.

(c) **Overtime adjustment.** For purposes of the calculations in step 4 in [paragraph \(b\)\(4\)](#) of this section only, for sound recordings of musical works with a playing time of over 5 minutes, adjust the number of Plays as follows.

(1) 5:01 to 6:00 minutes—Each Play = 1.2 Plays.

(2) 6:01 to 7:00 minutes—Each Play = 1.4 Plays.

(3) 7:01 to 8:00 minutes—Each Play = 1.6 Plays.

(4) 8:01 to 9:00 minutes—Each Play = 1.8 Plays.

(5) 9:01 to 10:00 minutes—Each Play = 2.0 Plays.

(6) For playing times of greater than 10 minutes, continue to add 0.2 Plays for each additional minute or fraction thereof.

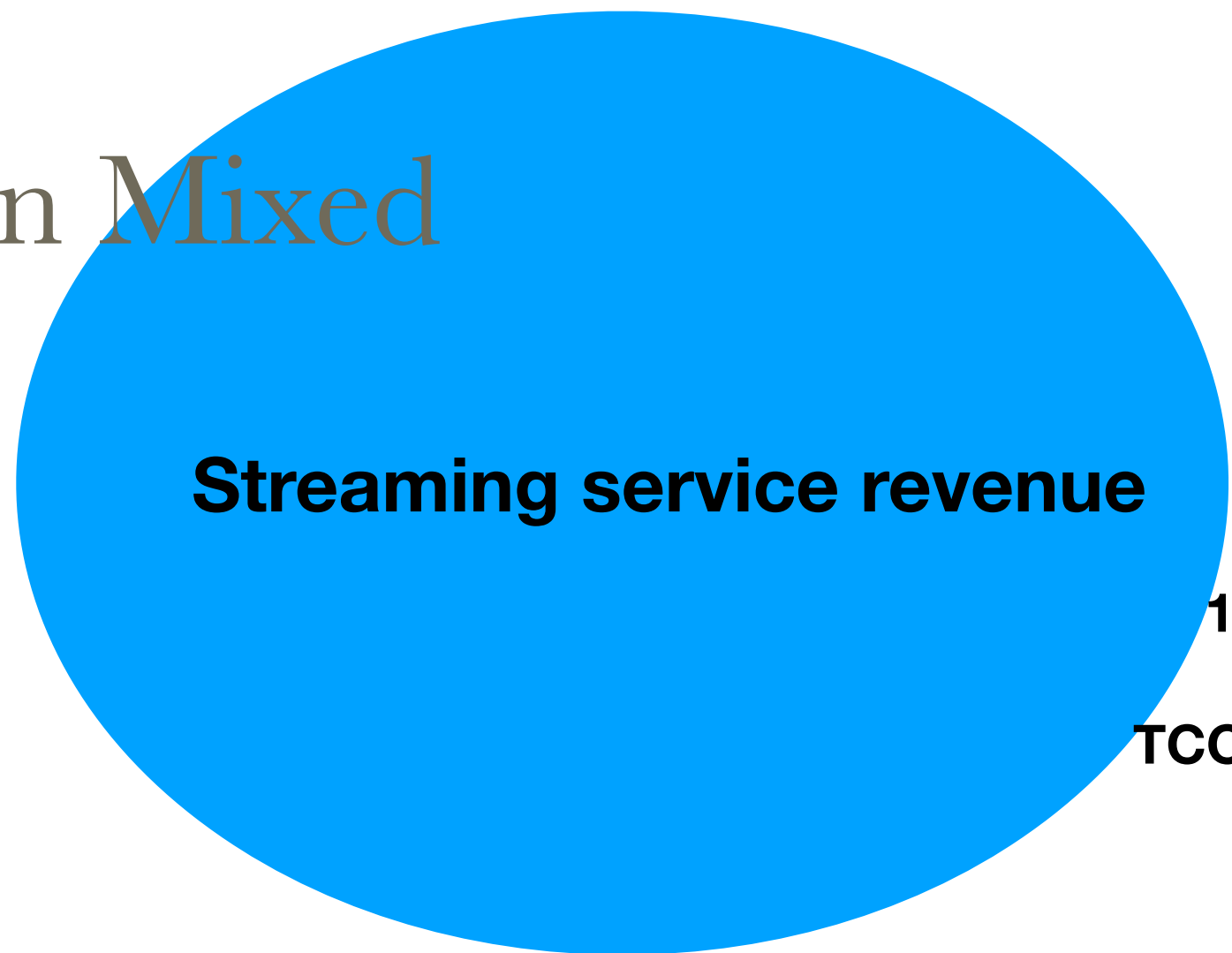
- (d) **Royalty floors for specific types of Offerings.** The following royalty floors for use in step 3 in [paragraph \(b\)\(3\)](#) of this section shall apply to the respective types of Offerings:
- (1) **Standalone Non-Portable Subscription Offerings—Streaming Only.** Except as provided in [paragraphs \(d\)\(4\)](#) and [\(6\)](#) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings only in the form of Eligible Interactive Streams and only from a non-portable device to which those Eligible Interactive Streams are originally transmitted while the device has a live network connection, the royalty floor for use in step 3 in [paragraph \(b\)\(3\)](#) of this section is the aggregate amount of 18 cents per subscriber per Accounting Period.
 - (2) **Standalone Non-Portable Subscription Offerings—Mixed.** Except as provided in [paragraphs \(d\)\(4\)](#) and [\(6\)](#) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings either in the form of Eligible Interactive Streams or Eligible Limited Downloads but only from a non-portable device to which those Eligible Interactive Streams or Eligible Limited Downloads are originally transmitted, the royalty floor for use in step 3 in [paragraph \(b\)\(3\)](#) of this section is the aggregate amount of 36 cents per subscriber per Accounting Period.
 - (3) **Standalone Portable Subscription Offerings.** Except as provided in [paragraphs \(d\)\(4\)](#) and [\(6\)](#) of this section with respect to Standalone Limited Offerings, in the case of a Subscription Offering through which an End User can listen to sound recordings in the form of Eligible Interactive Streams or Eligible Limited Downloads from a portable device, the royalty floor for use in step 3 in [paragraph \(b\)\(3\)](#) of this section is the aggregate amount of 60 cents per subscriber per Accounting Period.
 - (4) **Bundled Subscription Offerings.** In the case of a Bundled Subscription Offering, the royalty floor for use in step 3 in [paragraph \(b\)\(3\)](#) of this section is the aggregate amount of 33 cents per Accounting Period for each Active Subscriber. Notwithstanding the foregoing, solely where the Licensed Activity provided as part of a Bundled Subscription Offering would qualify as a Standalone Limited Offering if offered on a standalone basis, the royalty floor for use in step 3 in [paragraph \(b\)\(3\)](#) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.
 - (5) **Mixed Service Bundles.** In the case of a Mixed Service Bundle, the royalty floor for use in step 3 in [paragraph \(b\)\(3\)](#) of this section is the aggregate amount of 25 cents per Accounting Period for each Active Subscriber.
 - (6) **Other Offerings.** A Standalone Limited Offering, a Paid Locker Service, a Purchased Content Locker Service, and a free nonsubscription/ad-supported service free of any charge to the End User shall not be subject to a royalty floor in step 3 in [paragraph \(b\)\(3\)](#) of this section.

(e) **Computation of per-subscriber rates and royalty floors.** For purposes of this section, to determine the per-subscriber rates in step 1 in [paragraph \(b\)\(1\)](#) of this section and the royalty floors in step 3 in [paragraph \(b\)\(3\)](#) of this section, as applicable to any particular Offering, the total number of subscribers for the Accounting Period shall be calculated by taking all End Users who were subscribers for a complete Accounting Period, prorating in the case of End Users who were subscribers for only part of an Accounting Period (such proration may take into account the subscriber's billing period), and deducting on a prorated basis for End Users covered by an Offering subject to [subpart D of this part](#), except in the case of a Bundled Subscription Offering, subscribers shall be determined with respect to Active Subscribers. The product of the total number of subscribers for the Accounting Period and the specified number of cents per subscriber (or Active Subscriber, as the case may be) shall be used as the subscriber-based components of the royalty calculation for the Accounting Period. A Family Plan subscription shall be treated as 1.75 subscribers per Accounting Period, prorated in the case of a Family Plan subscription in effect for only part of an Accounting Period. A Student Plan subscription shall be treated as 0.5 subscribers per Accounting Period, prorated in the case of a Student Plan subscription in effect for only part of an Accounting Period. A Bundled Subscription Offering containing a Family Plan with one or more Active Subscriber(s) shall be treated as having 1.75 Active Subscribers. A Bundled Subscription Offering containing a Student Plan with an Active Subscriber shall be treated as having 0.5 Active Subscribers. For the purposes of calculating per-subscriber rates and royalty floors under this section, Artificial Accounts shall not be counted as subscribers, Active Subscribers, or End Users.

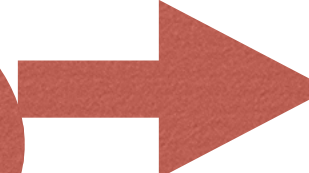
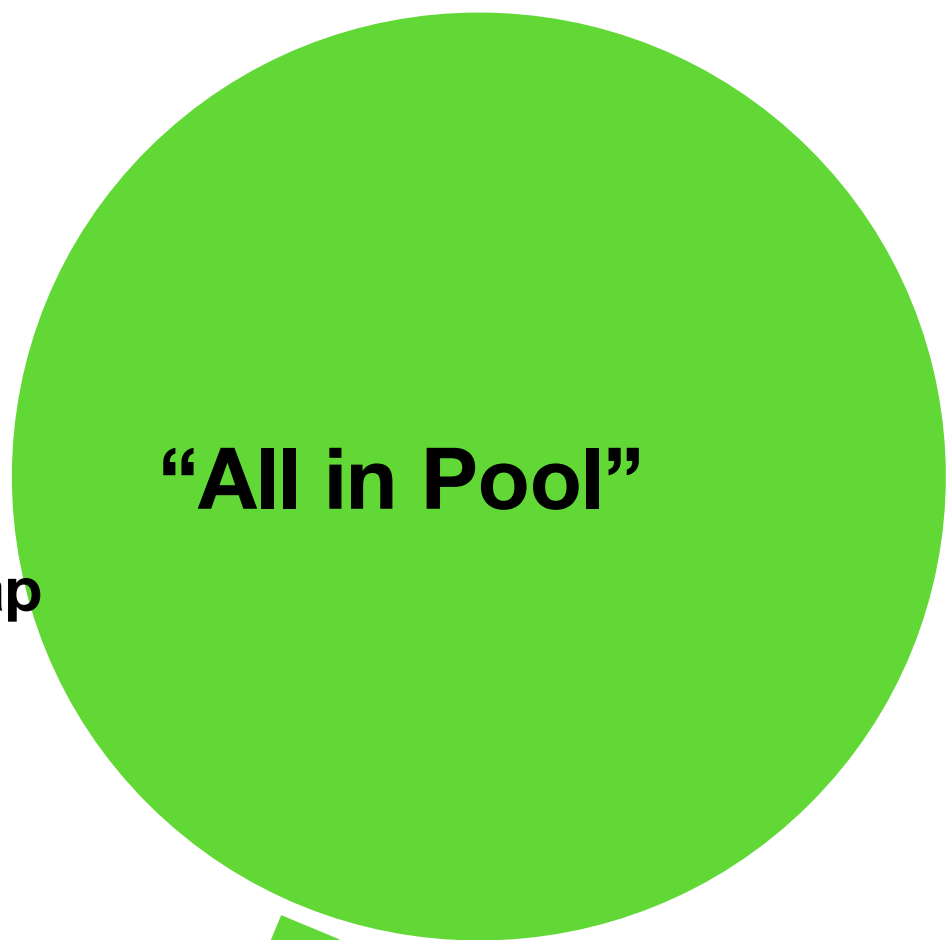
[87 FR 80458, Dec. 30, 2022, as amended at 89 FR 19274, Mar. 18, 2024]

Portable Subscription Mixed

2026



15.30% steaming service revenue
or
TCC limited by TCC per subscriber cap
Whichever greater

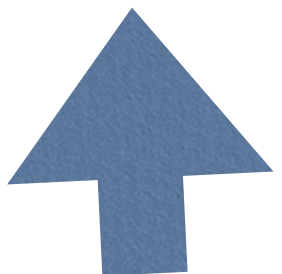


"alternate payable pool"

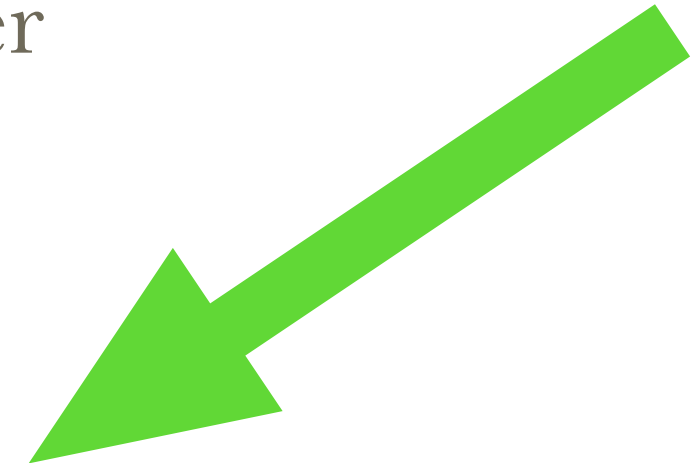
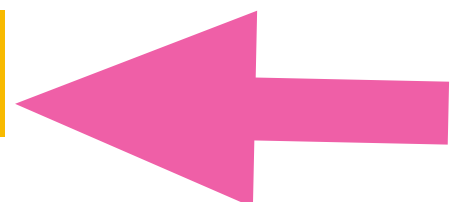
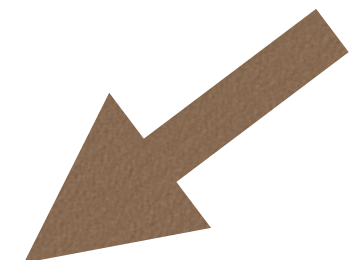
Subscriber minimum calc
(minimum x number subscribers)

whichever greater

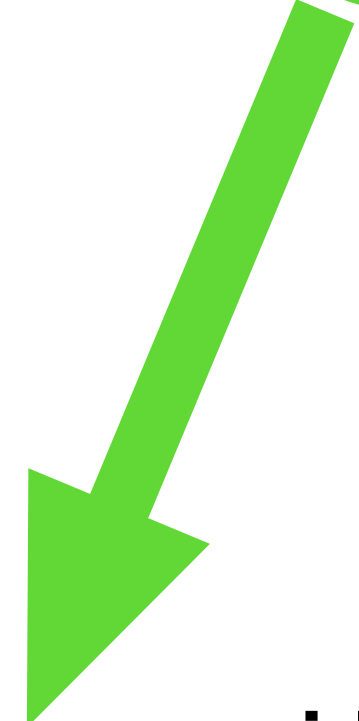
Per stream rate



Divided by number of streams



**Subtract money paid to
BMI, ASCAP, SESAC, GMR**



Streaming mechanical step by step 2026 rates Standalone Portable Subscription

(Adjusted) gross income of streaming service

Multiply by 15.30% = _____ Line 1

Total Amount paid to labels for recordings (Total Content Costs TCC)

Multiply by 26.2% = _____ Line 2

Multiply #subscribers by \$1.10 _____ Line 3 (TCC cap)

Lesser of line 2 or line 3 = _____ Line 4

The greater of Line 1 or Line 4

This is the "all in pool." _____

Subtract payments to BMI, ASCAP, SESAC and GMR from "all in pool"

This is the "Payable pool" _____

Multiply the number of subscribers by the "per subscriber minimum" (detailed in the Copyright

Royalty Board decision, usually \$0.60 but not always). Call this the Alternate Payable Pool

Choose the greater of Payable Pool or the Alternate Payable Pool and divide by number of streams

This is Per Stream Rate _____

To get the amount owed per song multiply the per stream rate

by number of times the song was streamed.

(Assuming song is less than 5 minutes, there is an adjustment made for songs

longer than 5 minutes.)

These change depending on tier

Bundled Subscription offering 2026

Jan 2026 rates

15.30% of adjusted gross revenue

 24.2% of TCC

No per subscriber TCC Cap

\$22,000,000 streaming service adjusted gross

\$12,000,000 TCC payments to sound recording owners

\$600,000 Payments to BMI

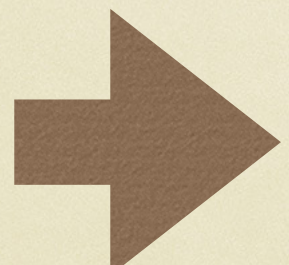
\$700,000 Payments to ASCAP

\$150,000 Payments to SESAC

\$50,000 Payments to GMR

4 Billion Streams

4 Million subscribers

 Per subscriber minimum \$0.33

Bundled Subscription offering 2026

Jan 2026 rates

15.30% of adjusted gross revenue

 24.2% of TCC

No per subscriber TCC Cap

\$22,000,000 streaming service adjusted gross

\$16,000,000 TCC payments to sound recording owners

\$600,000 Payments to BMI

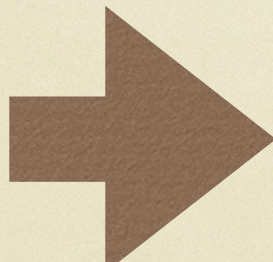
\$700,000 Payments to ASCAP

\$150,000 Payments to SESAC

\$50,000 Payments to GMR

4 Billion Streams

4 Million subscribers

 Per subscriber minimum \$0.33

➔ Standalone Non Portable Mixed Subscription 2026
Jan 2026

15.30% of adjusted gross revenue

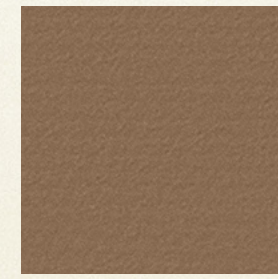
26.2% of TCC

- ➔ \$0.60 Per subscriber TCC cap
- \$22,000,000 streaming service adjusted gross
- \$16,000,000 TCC payments to sound recording owners
- \$600,000 Payments to BMI
- \$700,000 Payments to ASCAP
- \$150,000 Payments to SESAC
- \$50,000 Payments to GMR
- 4 Billion Streams
- 4 Million subscribers
- ➔ Per subscriber minimum \$0.36

FINAL PREP

Some Prep Work for the Final

- Do some research.
- Start with the Original US Copyright Act of 1790
- What did it protect? What were the term lengths?
- Note major revisions of the act through the last 200+ years
- What changed. Be able to write one or two paragraphs explaining this. You can create your own notes and cheat sheet.
- The copyright office is a good resource for much of this.



Copyright Registration Benefits

Benefits of Registration

While copyright registration is not a condition of copyright protection, there are certain advantages to registering your copyrights with the Copyright Office.

1. Registration is a prerequisite to filing an infringement suit in court for works of U.S. origin.
2. If registration is made within three months after publication of the work or prior to an infringement of the work, statutory damages and attorneys' fees will be available to the copyright owner. Otherwise, the copyright owner may only obtain an award of actual damages and/or profits of the infringing party.

3. Registration establishes a public record of the copyright claim, and, if made before or within five years of publication, registration will establish *prima facie* evidence of the validity of the copyright.
4. Registrations may be recorded with the U.S. Customs Service for protection against the importation of infringing copies. For more information, go to the U.S. Customs and Border Protection website at www.cbp.gov/xp/cgov/trade/priority_trade/ and click on "Intellectual Property Rights."

Basic Registration Process

The improper use of a copyrighted work, either without the permission of the owner or in violation of the terms of a compulsory license, is an infringement of that copyright. Infringement takes two basic forms: (1) the use of a copyrighted work without the necessary license, and (2) plagiarism.

For use without the necessary license, it is a relatively easy matter for the owner to prove the use and the lack of a license. It is in these situations where the defenses of Fair Use and parody usually come into play to alleviate the need for a license.

For plagiarism, proving the illegal copying is more complex. There are three key elements to proving a claim of plagiarism: (1) proof of ownership of the work allegedly being infringed; (2) that the allegedly infringing work is "substantially similar" to the original work; and (3) the defendant had "access" to the original work in order to have copied it. These are issues for the trier of fact to determine and must be proved by the plaintiff in that sequence, i.e., if there is no substantial similarity, access doesn't matter.

The classic case regarding plagiarism involves former Beatle George Harrison, *Bright Tunes Music v. Harrisongs Music*, 420 F. Supp. 177 (S.D.N.Y. 1976). One of Harrison's first solo works after the breakup of The Beatles was a song called "My Sweet Lord," recorded in 1970. Shortly after the release of the song, Harrison was sued by the publishers of a song titled "He's So Fine," which was written by Ronnie Mack and recorded by The Chiffons in 1962. Following the release of Harrison's version of "My Sweet Lord," musical similarities between it and "He's So Fine" were remarked on almost immediately—*Rolling Stone's* album review of January 1971

even referred to "My Sweet Lord" as an "obvious re-write of the Chiffons' 'He's So Fine.'" By March, proceedings were under way for what became a prolonged copyright infringement suit, lasting over 10 years.

In September 1976, a U.S. district court decision found that Harrison had "subconsciously" copied the earlier tune. One of the theories was that, since the members of The Beatles were known to be fans of American music, Harrison probably heard "He's So Fine" when it was popular in the early 1960s, thereby inferring access and satisfying the two-part test.

In 1978, before the court decided on damages in the case, Harrison's former manager Allen Klein, who had represented him earlier in the proceedings, purchased the copyright to "He's So Fine" from Bright Tunes. In 1981, the court decided the damages amounted to \$1,599,987, but that due to Klein's duplicity in the case, Harrison would only have to pay Klein \$587,000 for the rights to "He's So Fine"—the amount Klein had paid Bright Tunes for the song. At some point later, Harrison purchased the copyright to "He's So Fine," which his company still owns today.

Damages for Infringement

Under §500, et seq. of the Act, the remedies for infringement are described. One remedy described in §502 is for a court to "grant temporary and final injunctions on such terms as it may deem reasonable to prevent or restrain infringement of a copyright,"

which would include preventing any further distribution or sale of the infringing product.

Another remedy, as described in §503, is for the infringing articles to be impounded and destroyed. This would include all copies of phonorecords, films, DVDs, or other products that contained the infringing work.

Still another remedy is actual damages to the copyright owner or profits made by the infringer. For example, if an infringer sells 10 copies of a CD, and the mechanical rate for the publisher would be \$0.091 for that copy, the actual damages would be \$0.91. If for those same 10 CDs, the infringer made a profit of \$5.00 per CD, the profits would be \$50.00. Neither of these amounts would warrant bringing a lawsuit for copyright infringement. In either case, the court could decide to impose statutory damages that would exceed those amounts, as described below.

If the court finds, however that the infringement was committed willfully, the amount of statutory damages can increase dramatically. Statutory damages are provided in §504 (c) of the Act. Basic damages for copyright infringement are currently between \$750 and \$30,000 per work, at the discretion of the court; however, plaintiffs who can show willful infringement may be entitled to damages up to \$150,000 per work. Defendants who can show that they were "not aware and had no reason to believe" they were infringing copyright may have the damages reduced to \$200 per work.

Lastly, per §505, the court in its discretion may allow the recovery of full costs by or against any party other than the United

States or an officer thereof. The court may also award a reasonable attorney's fee to the prevailing party as part of the costs.

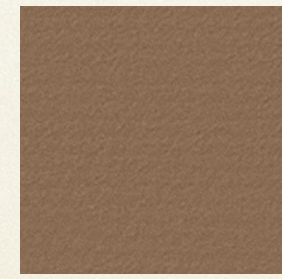
In the real world, however, many claims of copyright infringement are settled between the parties before litigation commences or before a verdict is reached at trial. The parties can mutually agree on a remedy that compensates the owner of the infringed work for something less than what the statutes might require but also alleviates both parties of the time and expense that would be devoted to a trial as well as the risk of success and failure. A noted judge once told me, "The best compromise is one that leaves both parties slightly unhappy." A settlement is just that: a compromise that resolves the issues between the parties while compensating the infringed party in a manner that they deem acceptable under the circumstances.

Exceptions to the Exclusive Rights of Copyright Owners

There are certain uses of copyrighted material that do not require permission or licensing from the copyright owner, as set out by various sections of the Act limiting the exclusive rights granted to the copyright owner.

- A. **The right of first sale:** Once a copy of a copyrighted work is obtained legally, either through purchase or license, that copy may be resold by the purchaser to a third party without the

Attorneys fees!



Copyright Exceptions

Fair Use

EXCEPTIONS TO EXCLUSIVE RIGHTS

Certain uses of copyrighted material do not require permission or licensing from the copyright owner, as set out by various sections of the Act limiting the exclusive rights granted to the copyright owner.

- The right of first sale
- Reproduction by libraries and archives
- Educational and religious uses
- Fair Use
- Ephemeral Recording
- Parody



EXCEPTIONS TO EXCLUSIVE RIGHTS

The Right of First Sale

- The owner of a particular, lawfully made copy or phonorecord is able to sell—or otherwise dispose of—that particular copy without the authority of the copyright owner, or compensation to the original copyright owner or creator.
- Recent court case held that the “resale” of digital files was not legal. Part of reasoning was that it was impossible to determine if the owner actually parted with the digital file.



EXCEPTIONS TO EXCLUSIVE RIGHTS

The Right of First Sale

- Recent court case held that copyrighted works legally purchased overseas could be re-sold in the United States.
- **Exception:** California has a law providing the creator of fine art a commission on any subsequent sale.





I can sell these paintings but I can not reprint them

There are certain uses of copyrighted material that do not require permission or licensing from the copyright owner, as set out by various sections of the Act limiting the exclusive rights granted to the copyright owner.

- A. **The right of first sale:** Once a copy of a copyrighted work is obtained legally, either through purchase or license, that copy may be resold by the purchaser to a third party without the permission of or compensation to the original copyright owner. See §109. Effect of transfer of particular copy or phonorecord.

If a party buys a CD containing musical compositions as well as performance by an artist, that party has the right to sell or transfer that particular copy of the CD, but does not have the right to reproduce copies of any of the copyrighted material on the CD. See [§109\(a\)](#).

The same concept would apply to a piece of art. The purchaser of a painting has the right to sell that painting but not the right to make posters or other reproductions of the painting. **That said, there is a little-known California**

law called the "Resale Royalty Act" ([California Civil Code §986](#)). What this law essentially states is that when a person purchases fine artwork and then resells it for more than \$1,000, such seller must pay five percent (5%) of the "gross sales price" to the artist who created the artwork. See the code section for more details.

In late 2011, a bill was introduced in Congress that would amend §106 of the Act and provide similar compensation to living artists throughout the country for artwork sold by auction houses for more than \$10,000. See H.R.3688—the proposed Equity for Visual Artists Act of 2011. As of the date of this writing, this bill has not passed.

However, in the spring of 2013, the Supreme Court held that the first-sale doctrine applies to copies of copyrighted work lawfully made and purchased abroad. In *Kirtsaeng v. John Wiley & Sons, Inc.*, No. 11-697 (U.S. Mar. 19, 2013), the court held that textbooks originally purchased in Thailand could be resold in the United States, as the purchase of the books

EXCEPTIONS TO EXCLUSIVE RIGHTS

Reproduction by Libraries and Archives

- Libraries and other repositories of copyrighted works shall have the right to make copies for archival purposes, but not for distribution.



EXCEPTIONS TO EXCLUSIVE RIGHTS

Educational and Religious Uses

- Certain uses by educational and religious organizations are also protected under these exceptions to further their goals.
- The Act allows for the “performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a classroom, or similar place devoted to instruction.”



EXCEPTIONS TO EXCLUSIVE RIGHTS

Ephemeral Recordings:

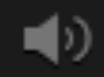
Temporary recordings made solely for the purpose of broadcast

Parody:

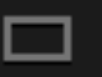
Must satirize the work it uses as source of parody.

Comedic use is not necessarily parody.





0:50 / 3:29



"Weird Al" Yankovic - Eat It

Criticism and Parody

GoldieBlox agreed to pay \$1m to charity in Beastie Boys settlement

Argument over 'fair use' of Girls song ended in March with deal to donate to STEM education for girls

Stuart Dredge

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A still from GoldieBlox's video featuring the Beastie Boys song Girls.

In March, the Beastie Boys reached a settlement with the US toy company GoldieBlox over the latter's parody of their song Girls in a viral advert. Now the details of that settlement have been published.

GoldieBlox agreed to pay \$1m to a charity of the band's choice supporting

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was made legally.

- B. **Reproduction by libraries and archives: it has been** determined that libraries and other repositories of copyrighted works shall have the right to make copies for archival purposes but not for distribution. For example, UCLA has a large library of old films and television programs that are currently on film or videotape that is deteriorating. Under this principle, UCLA is allowed to make digital copies of these films so that they may be viewed by researchers or members of the general public at the UCLA facilities. UCLA may not, however, make copies of these productions for distribution or sale to the public. See §108.
- C. **Certain uses by educational and religious organizations are also protected under these exceptions to further their goals.** §110 (1) of the Act allows for the "performance or display of a work by instructors or pupils in the course of face-to-face teaching activities of a nonprofit educational institution, in a

classroom or similar place devoted to instruction." For example, a teacher in a literature class may make copies of a verse from a poem as an instructional aide for her lessons. This would be permissible, while copying an entire book by the poet in question would not be.

§110 (3) of the Act allows for "performance of a nondramatic literary or musical work or of a dramatico-musical work of a religious nature, or display of a work, in the course of services at a place of worship or other religious assembly" if the performance is free or the proceeds are used for religious purposes.

- D. **Fair Use: This is one of the most difficult and misunderstood sections of the Act. §107 explains that the use of copyrighted material for purposes such as criticism, comment, news reporting, teaching (including multiple copies for classroom use), scholarship, or research, is not an infringement of copyright. In determining whether the use made of a work in any particular case falls under this doctrine,**

EXCEPTIONS TO EXCLUSIVE RIGHTS

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EXCEPTIONS TO EXCLUSIVE RIGHTS

Fair Use

Factors considered when determining fair use:

1. The purpose or character or the use.
2. The nature of the copyrighted work.
3. The amount and substantiality of the portion used.
4. The effect of the use on the potential market value of the copyrighted work.



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the factors to be considered shall include (quoting §107):

- (1) *the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;*
- (2) *the nature of the copyrighted work;*
- (3) *the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and*
- (4) *the effect of the use upon the potential market for or value of the copyrighted work.*

These are *very* subjective tests that are the basis for many court decisions. But the Fair Use doctrine is often misquoted as an excuse to infringe copyrights by parties that know the term "fair use" but not its meaning under the law. In some cases, the party making the claim feels that it isn't "fair" that they can't use the copyrights of very successful musical artists who have a lot of money, while the user has very little. In the TV

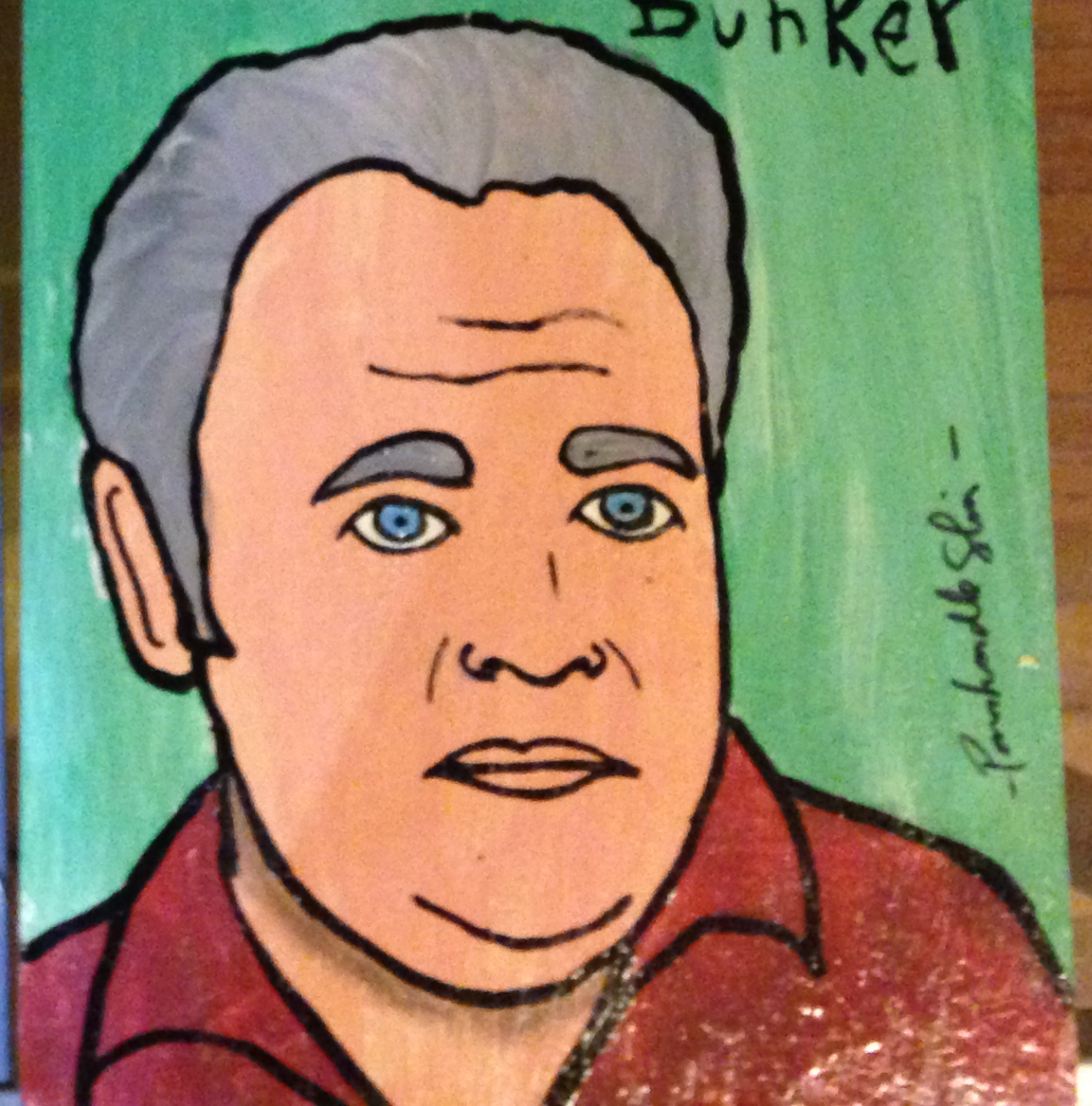
and film world, often the producers use the doctrine as an excuse to use a copyright for which they cannot get permission to use for a reasonable fee or permission is denied altogether.

#2 the hardest. the uniqueness of the original work? news description of events vs abstract poetry. But many other considerations.

Bayard Rustin was arrested in 1953 for being a Homosexual. He was an advisor to Martin Luther King Jr. Mr. Rustin organized the 1963 March on Washington. He fought a non-violent fight his whole life for equality.



"Equality is Unfair! What's the point of a man working hard all his life, trying to get some place if all he's going to do is wind up equal." - Archie Bunker



from TV Show

I want you to think about this. Is this fair use?

Warning Fair Use is a US only legal concept. Some other countries have similar exemptions but they are often not as broad